



Chairman Buddy Mendes,
 Vice Chairman Steve Brandau,
 Supervisor Brian Pacheco,
 Supervisor Sal Quintero,
 Supervisor Nathan Magsig

May 26th, 2020

Re: Public Participation Access and Violation of Fresno County Noticed Public Hearing Policy

Dear Chairman Mendes and Fresno County Supervisors,

Over the last several months, we have continuously attempted to work with Fresno County to establish a system of participation that is responsive to the needs of residents, stakeholders, staff, and the Board. The purpose of this letter is to outline our concerns about Fresno County’s current policy and practice surrounding public comment with examples on how the current policy has

failed the most vulnerable communities in the county, and to once again¹ urge Fresno County to follow several jurisdictions across the valley who have adopted public participation measures to ensure access to democracy during the COVID-19 pandemic.

1. Limiting Public Comment to Those who Have Access to Email is Not Democratic or Equitable. The County Should Provide a Telephone Line to Members of the Public

Our first concern with Fresno County's current policy is that it limits access to public comment to those who have email and either broadband service or adequate cell phone service and data to submit emails. Various communities in Fresno County-- most notably, disadvantaged unincorporated areas-- do not have access to broadband. For example, in Cantua Creek, there is no broadband access and unreliable cell phone reception. Residents in Cantua Creek and beyond are unable to send emails or stream board of supervisor meetings. Recently, a resident in Cantua wanted to voice suggestions on how to allocate CARES dollars to address the needs of Cantua Creek in light of COVID-19. She confidently asked for the number to call in to give her public comment and was frustrated and upset when she learned that Fresno County does not provide that option.

Cantua Creek residents are not alone in this frustration. Many constituents across Fresno County do not have access to broadband or data to actively participate through email. In fact, we have heard from the County's constituents that they feel more isolated than ever with no accessible or safe way to participate in meetings or visit the chambers.

Though the County has refused to accommodate contemporaneous participation, it has demonstrated its capacity to do so by allowing Board members to participate remotely. We maintain that the general public has the right to the same accommodations that Board members do as outlined in Board policy: "any member of the Board of Supervisors may participate from a remote location by teleconference."

Allowing for both written and verbal comments before and during the meeting is the best way to protect access to democracy for all constituents and community stakeholders, given the various barriers to submit comments online. Furthermore, by providing an opportunity for members of the public to submit written comments electronically or to make public comment verbally via telephone, the County would ensure its actions are consistent with the principles of public participation and open governance, as well as upholding the intent and spirit of the Brown Act during extraordinary times.

¹ Since March 23, 2020, we have been frequently addressing staff via email asking for a telephone line for community residents wishing to make public comment during your meetings. On April 7th, 2020, we submitted a letter to the Board of Supervisors that outlines best practices for public participation. It is also attached here for your reference.

2. The County has Refused to Read Written Public Comment Aloud on the Record During Board of Supervisor Meetings

In addition to denying members of the public access to telephonic verbal public comment, the County has refused to read written comments on the record during this pandemic. According to the Fresno County Code of Ethics, the Board of Supervisors and county employees must, “treat all individuals encountered in the performance of one's duties in a respectful and professional manner. Uphold these principles, ever conscious that public office is a public trust.” When verbal comments are impossible and written comments are not read aloud on the record, community residents are silenced and all sense of mutual respect and trust is tarnished. By failing to meaningfully acknowledge public input, the Supervisors reject their ethical and moral obligation to respect all individuals and their responsibility as public officials to make informed decisions and foster public decision-making.

On April 13, 2020, Leadership Counsel respectfully asked the Board and County Counsel to have all comments received read aloud to ensure that residents' comments were being considered prior to final decisions being made. However, of the comments received asking the Board to pass an eviction moratorium, none were read on the record, and the clerk stated that 17 comments had been received in favor of such an ordinance. These comments were not acknowledged, responded to nor were staff directed to engage. This policy discourages and dissuades residents from participating to begin with as it provides no assurance that their comments were acknowledged, responded to or considered in decision making. Moreover, it violates the spirit of open meeting laws including the Brown act which are designed to foster interaction between the public and electeds, and allow the public to inform decisions.

This practice is not democratic and must be resolved immediately through (a) provision of a telephonic phone line with language access consistent with the Bilingual Services Act, and (b) institution of and compliance with a policy to read all comments aloud on the record during your meetings for residents unable to join by phone during the meeting.

3. When Written Comments *have* been Read Aloud, Fresno County has Violated its own Policy Surrounding Public Comment for Noticed Hearings

Fresno County's own policy directs a staff member to read 3 minutes of submitted written comments during a noticed public hearing per its stated policy on County agenda,

“agenda items involving noticed public hearings, the Board will recess for ten (10) minutes during the agenda item to allow the public the opportunity to email written comments to BOScomments@fresnocountyca.gov. All written comments must be received by the close of the ten (10) minutes public comment period. All written comments received by the close of the ten (10) minutes public comment period will be read aloud by a staff member during the applicable

agenda item, provided that such comments may be read within three (3) minutes allotted to each speaker. Any portion of comments received that extend past three (3) minutes may not be read aloud due to time restrictions, but will be included in the record of proceedings.”

Fresno County violated this policy on April 28th, 2020 during the public hearing regarding the 2020-2024 Consolidated Plan for Fresno County. When we provided comments on this matter, rather than complying with Fresno County’s written policy, the County Clerk only read 250 words of the submitted comment. When the County Clerk announced that she had read 250 words, and asked to continue reading the comment, Chairman Mendes answered, “no,” asking her to stop reading the comment. Because the three-minute mark had not yet been reached, this was a violation of the policy that was printed on the agenda².

Additionally, the livestream incorrectly stated that only 250 words would be read during public comment, while the agenda indicated that three minutes of comments would be read.

Furthermore, this agenda item was not addressed as a Noticed Hearing during the livestream. (A screenshot from the livestream with the incorrect comment policy is attached with this letter.)

Finally, while we thank the County Clerk for reading our comment aloud on the record, we must note that our comments were not accurately characterized. Rather than referring to the “AI” mentioned in our comment as “Analysis of Impediments,” the Clerk incorrectly referred to it as an “agenda item” to Public Works staff which may have created confusion. This may have inhibited staff’s understanding of our comments and ability to respond to our concerns regarding the Analysis of Impediments. Given this misunderstanding and that our comment was not read in its entirety, it is also attached along with this letter for your reference, we believe that our recommendations regarding public comment would resolve confusion and prevent violations like this one for the future.

4. Recommendations for an Effective, Equitable, and Democratic Policy regarding Public Comment

Governor Newsom's Executive Order N-25-20³ issued on March 4th, provided the following recommendations for local decision-making bodies to consider while navigating public meetings during the COVID-19 pandemic. It suggests the following:

² The time stamps for this comment on the County’s live stream video record indicated that the Clerk began reading our comment at 28:39 and ended at 30:12, for a total of one minute and thirty-four seconds.

³ Executive Order N-25-20 Can be found here: <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.12.20-EO-N-25-20-COVID-19.pdf>

“All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene and the Brown Act and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.”

There is no question that community residents in Fresno County, especially those in hard to reach communities, have various barriers to participate in meetings pre-pandemic. However, let us not forget the realities in this county. We live in a diverse community, with a large group of monolingual constituents who can not engage with their elected official when there are no translation services. Broadband access is not widespread in Fresno County, and frankly an expensive luxury that many of the farmworker families simply can not afford. Cell phones have data limits, and during COVID-19, with children at home, residents are prioritizing it for schoolwork, and live streaming video is a data intensive activity. The current policy does not allow for equitable access to observe nor address the Fresno County Board of Supervisors. It deliberately excludes the monolingual residents and those who do not have access to broadband, or know how to use email. Additionally, residents following social distancing and self-isolation practices should not be further excluded from board meetings. Especially, when local governments are managing relief aid, services, and important educational material. Fresno County should take into consideration the barriers to access and take action to provide accessible channels for community residents to access communication with their decision makers.

While we acknowledge the County is navigating uncharted territory, the examples provided above illustrate that the current policy surrounding public comment is not working effectively. Rather, it has created confusion, is fraught with inconsistency, and does not provide access to democracy to constituents or stakeholders without access to email.

Several San Joaquin Valley counties and towns have adopted policies to ensure that, despite a pandemic, meaningful public engagement will not be sacrificed. For example, the City of Madera, Tulare County, and Kern County are all allowing contemporaneous public comment via telephone during their meetings. We look towards Fresno County to demonstrate leadership in the region and adopt measures to promote transparency and participation during a pandemic.

We respectfully request the County immediately modify its policy regarding public participation during COVID-19 to include:

- Direction to staff to engage community-based organizations and other stakeholders who are in direct communication with residents to ensure that residents are informed and notified through multiple channels about remote options for public meetings.
- Direction to staff to send any relevant preparatory materials and other necessary documents to community-based stakeholders to share with residents before meetings.
- Direction to staff to notify the public of all hearing/meeting times, topics, and detailed information regarding participation. All translated preparatory materials and documents will be made available at the time meeting notices are posted. Notices will be easy to find on state or local jurisdiction websites, and disseminated *at least* 72 hours in advance. Notices will clearly show how public comments will be received.
- Direction to staff to provide multiple options for teleconferencing, with *two-way* communication options that allows either computer-users or phone-users to engage.
- Direction to staff to develop a voice message system so the public will have the ability to leave voice message comments, which can be limited to 3 minutes, and played during the comment period. Messages will be received in multiple languages and interpreted as needed.
- Direction to staff to provide an adequate telephone option—available in multiple languages—and ensure that comments can be made via phone to ensure all residents have access to participate in commission and board meetings.
- Direct staff to give ample time for the public to submit comments prior to the meeting’s start time, such as via email or a dedicated phone number. Comments will not be limited to only email and avoid implementing arbitrary word limits on email comments. All email comments to be read aloud on the record by staff during the live meeting, for transparency and consideration by the full board/commission.
- Direction to the County Clerk to ensure sufficient time for public comment after *each* agenda item during the meeting, and allow sufficient time for live comments to be submitted either electronically or via telephone.
- Establishment of separate teleconference lines or audio channels to meet language access needs. Interpreters should be available—for Spanish and/or other languages that are needed—for residents to understand and participate in the meeting.

* * *

If any questions are to arise or staff would like to collaborate on next steps, do not hesitate to reach me at 559-920-0558.

Respectfully,

Leslie Martinez
Leadership Counsel for Justice and Accountability

Nayamin Martinez
Central California Environmental Justice Network

Genoveva Islas
Cultiva La Salud

Jim Grant
Diocese of Fresno

Pedro Hernández
Audubon California

Socorro Santillan
Planned Parenthood, Mar Monte

Democratic Socialists of America, Fresno.

Kimberly McCoy
Fresno Building Healthy Communities

Andy Levine
Faith in the Valley, Fresno

Daniel O'Connell
Central Valley Partnership

Kevin Hamilton
Central California Asthma Collaborative

Sukaina Hussain
CAIR Central California

Luis Ojeda
American Civil Liberties Union Foundation, Northern California

Chione Flegal
PolicyLink

Ashley Rojas
Fresno Barrios Unidos

Women's International League for Peace & Freedom, Fresno branch,

ATTACHMENT ONE: PUBLIC PARTICIPATION LETTER

Chairman Buddy Mendes, District 4
Vice Chairman Steve Brandau,
District 2 Supervisor Brian Pacheco, District 1
Supervisor Sal Quintero, District 3
Supervisor Nathan Magsig, District 5

April 7th, 2020

RE: Recommendations to Promote Equitable Public Participation in Local and State Government Public Meetings During and After COVID-19

Dear Chairman Mendes and Fresno County Board of Supervisors:

Public participation is a crucial part of our democratic process, including the ability for all residents to engage in public board, commission, and legislative meetings and to provide public comment. **All residents should be given the opportunity to have their voices heard in local, regional and state decision-making processes, in an inclusive and transparent manner that fosters dialogue and information exchange.**

The COVID-19 pandemic and associated public health and economic crises that it has created have made such participation challenging, as California remains under a shelter-in-place order. However, the State must rise to the challenge and refuse to allow democracy to falter in the face of this pandemic—especially at the expense of communities with the least access to public process even when there is not a pandemic. As many residents cope with taking care of themselves and loved ones, and deal with added stress, limiting their participation in any board or commission meeting only adds to an already difficult time. Instead, this time of crisis—when the public’s trust in its institutions is needed—requires an unprecedented plan to assure democracy, transparency, and participation in our public processes.

Governor Newsom issued Executive Order N-25-20 (March 12, 2020), which grants local legislative and state bodies the authorization “to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to attend and to address the local legislative or state body.” While the *physical presence* requirements of the Brown Act and Bagley-Keene Act are waived, public meetings are still required to abide by all other provisions of these laws, including advanced notice of public meetings. The Order further states that state and local bodies should:

“adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.”

We urge the local and regional jurisdictions, state agencies, and the Legislature, to implement the following activities and practices for equitable remote public participation, to meet the legal requirements of N-25-20. We add that these options should be available not only during a pandemic, but at all times, so that those who are not physically able to attend meetings or hearings may still participate.

The Leadership Counsel for Justice & Accountability works alongside primarily low-income communities of color in the San Joaquin and Eastern Coachella Valleys. Many of the residents we work with have experienced obstacles accessing and meaningfully participating in public meetings. During this public health crisis, COVID-19 exacerbates these challenges. For example, residents in disadvantaged communities may have limited access to complex applications, internet and email, which are currently the default for many agencies. We strongly urge agencies to begin implementing the following recommendations, which are based on our years of expertise in DAC engagement and recent conversations with residents about what would work best for them to participate in meetings during this time.

Our recommendations are as follows:

- Reach out to community-based organizations and other stakeholders who may be in direct communication with residents early to help make sure that residents are informed and notified through multiple channels about remote options for public meetings. Send any relevant

preparatory materials and other necessary documents to community-based stakeholders, so that they may potentially share them with interested residents prior to the meeting.

- Notify the public of all hearing/meeting times, topics, and detailed information regarding participation. All translated preparatory materials and documents should be made available at the time meeting notices are posted as well. Notices should be easy to find on state or local jurisdiction websites, and disseminated at least 72 hours in advance. Notices must clearly show how public comments will be received.

- Provide multiple options for teleconferencing, with two-way communication options that allows either computer-users or phone-users to engage.

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- Each teleconferencing medium will offer benefits and limitations, ranging from professional options such as Zoom, GoToMeeting, and WebEx, as well as wide-reaching mediums for video streaming like YouTube and Facebook Live. For live-streamed meetings, the public should be allowed to comment in real time, through a combination of phone, video, chat boxes, and/or email.

- Consider allowing the public to leave voice message comments, which can be limited to 3 minutes, and played during the comment period and ensure that these messages can be received in multiple languages and interpreted as needed.

- For members of the public that may not have access to the internet or a computer, or who are unable to use video applications, consistently provide an adequate telephone option—available in multiple languages—and ensure that comments can be made via phone.

- Give ample time for the public to submit comments prior to the meeting’s start time, such as via email or a dedicated phone number. Written or voice message comments should be allowed up until the start of the meeting. Do not limit opportunities to comment only to email and avoid implementing arbitrary word limits on email comments. Limiting comments only to email leaves room for them to remain unheard and ignored. Allow email comments to be read aloud on the record by staff during the live meeting, for transparency and consideration by the full board/commission.

- Ensure that there is time for public comment after each agenda item during the meeting, and allow sufficient time for live comments to be submitted either electronically or via telephone.

- Consider using separate teleconference lines or audio channels to meet language access needs. Interpreters should be available—for Spanish and/or other languages that are needed—for residents to understand and participate in the meeting.

- Work with community-based equity, social justice and environmental justice organizations to determine when it may or may not be appropriate to delay a hearing or meeting. Decisions that impact DACs must be done with their guidance and input, and agencies should ensure that community residents are able to give meaningful input into the process. For example, agencies must continue momentum on certain decisions and activities that are critical or time-sensitive to creating equity, extending basic resources, protecting public health, and providing healthy, sustainable community infrastructure to DACs (i.e. clean water and air). However, in some

circumstances, the situation may necessitate delay of a decision in order to meaningfully incorporate resident feedback.

The bottom line is that local and state bodies should consult with community-based organizations and should keep equity, justice, transparency and accountability at top of mind when determining action on postponing or cancelling meetings and action items.

Residents following social distancing and self-isolation practices should not be further excluded from commission and board meetings. We believe that the recommendations highlighted above will help ensure increased access to democracy in our communities during this challenging moment, and we urge all jurisdictions and agencies to do everything in their power to be inclusive and transparent as they strive for equitable public participation during this challenging time.

Sincerely,

Leslie Martinez

Fresno County Policy Advocate

ATTACHMENT TWO: NOTICED PUBLIC HEARING COMMENTS SUBMITTED 04/28/2020

Agenda Item 5 - Comments Inbox x



Leslie Martinez <lmartinez@leadershipcounsel.org>
to BOScomments ▾

Tue, Apr 28, 9:01 AM ☆ ↩ ⋮

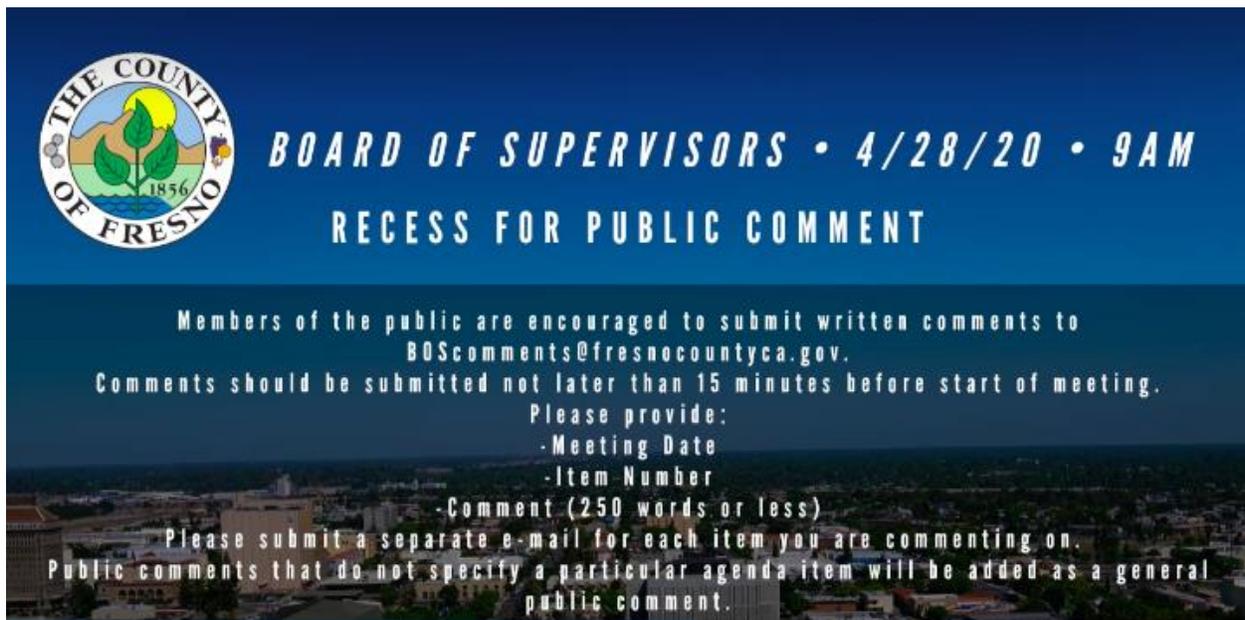
The County's adoption of Consolidated Plan today is premature for two primary reasons: 1) The County has failed to update its Analysis of Impediments to Fair Housing since 2010 and 2) The County has failed to conduct an adequate community engagement process to inform the development of the Consolidated Plan before our today.

To our knowledge, Fresno County did not update the Analysis of Impediment prior to presenting this consolidated plan update, and has not conducted an AI update since 2010. The County's housing elemtn states that it conducted an "internal review" in 2015 - an internal review without public process clearly does not meet the standards set forth by HUD. We have heard nothing of an update to the AI since that time, although HUD guidelines suggest an update every 3-5 years and the Fresno County Housing Element policy requires an update every 5 years. A primary purpose of the AI is to inform the consolidated plan, including its funding allocation strategies. HUD expects entitlement jurisdictions "to develop an AI that involves and addresses the concerns of the entire community." FHPG, 3:3. According to HUD's Fair Housing Planning Guide, "The AI structure should provide for effective, ongoing relationships with *all* elements of the community with clear and continuous exchange of concerns, ideas, analysis, and evaluation of results." FHPG, 2:12. Without an AI the Consolidated plan is incomplete and outdated on the needs in Fresno County. We ask the board to address staff on the timeline for the AI and why the consolidation plan moved forward without it.

With respect to the Consolidated Plan before you today, based on the information available to us, the County has not met the standards set by HUD for its preparation. HUD clearly requires for, "The "[chief executive] should ensure, through focus groups, an advisory commission, town meetings, or other effective means, that regular contact and working arrangements are created and maintained" with fair housing organizations, other governments in the metropolitan area or region, advocacy groups, housing providers, banks and other financial institutions, and the general public. 2:13-14. Leadership Counsel nor other community based organizations, legal aid groups, and community residents which we contacted, are aware of the county taking any steps to engage community and stakeholders as identified by HUD guidelines.

We look forward to working with the county and Staff to better community engagement and address the issues in the consolidation plan.

ATTACHMENT 3: SCREENSHOT OF MESSAGE DISPLAYED DURING PUBLIC HEARING



The screenshot displays a public hearing notice from the County of Fresno Board of Supervisors. On the left is the official seal of the County of Fresno, featuring a sun, a tree, and the year 1856. The main text is centered and reads: "BOARD OF SUPERVISORS • 4/28/20 • 9AM" followed by "RECESS FOR PUBLIC COMMENT". Below this, a message encourages public participation, providing the email address BOScomments@fresnocountyca.gov and a 15-minute submission deadline. It lists the required information for comments: Meeting Date, Item Number, and a comment of 250 words or less. The notice concludes by stating that separate emails are needed for each item and that general comments will be accepted.

THE COUNTY OF FRESNO

BOARD OF SUPERVISORS • 4/28/20 • 9AM

RECESS FOR PUBLIC COMMENT

Members of the public are encouraged to submit written comments to
BOScomments@fresnocountyca.gov.
Comments should be submitted not later than 15 minutes before start of meeting.
Please provide:
- Meeting Date
- Item Number
- Comment (250 words or less)
Please submit a separate e-mail for each item you are commenting on.
Public comments that do not specify a particular agenda item will be added as a general
public comment.