

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER**

MINUTE ORDER

DATE: 07/03/2019

TIME: 08:26:00 AM

DEPT: C25

JUDICIAL OFFICER PRESIDING: Sheila Fell

CLERK: Rick Burns

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: Corinne Mika

CASE NO: **30-2019-01062485-CU-CR-CJC** CASE INIT.DATE: 04/09/2019

CASE TITLE: **People's Homeless Task Force vs. County of Orange, Orange County Board of Supervisors**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Civil Rights

EVENT ID/DOCUMENT ID: 73079594

EVENT TYPE: Under Submission Ruling

APPEARANCES

No appearances.

The Court having reviewed the pleadings filed in this matter, having heard oral argument, having reviewed applicable law, and having taken Plaintiff/Petitioner's Motion for Preliminary Injunction to Enjoin the County of Orange and Orange County Board of Supervisors from enforcing Rules of Procedure, Numbers 23, 44, 46, 47, 48 and the County Records Management Policy under submission on June 12, 2019, now rules as follows:

Defendants' unopposed requests for judicial notice are granted.

The burden is on Plaintiff to show all elements necessary to support issuance of the injunction.

The First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired. Activities protected by the First Amendment, are subject to reasonable time, place, and manner restrictions.

The restriction 'may not be based upon either the content or subject matter of speech.'

The Ninth Circuit Court of Appeals reiterated the rule that a "subject-matter or speaker-based exclusion must meet two requirements to be reasonable in a limited public forum. First, it must be 'reasonable in light of the purpose served by the forum.' Second, exclusions must be based on a standard that is definite and objective."

Standing

Plaintiff submitted sufficient evidence to support a finding of associational standing. The Court declines to find Plaintiff lacks standing to bring the claims based on the evidence presented.

Rule 23

Plaintiff did not meet its burden of showing Plaintiff is likely to prevail on the merits of this claim. Although Plaintiff contends one of its members noticed a decrease in public comments after the change in February, 2018, the decrease could have been due to other factors [such as the number of agenda items and factors impacting attendance such as holidays]. Further, Plaintiff's reply evidence did not support a finding that the number of speakers decreased after the change. Even if Plaintiff had shown a likelihood of prevailing on this claim, the potential harm tips in favor of Defendants.

The Motion is denied as to Rule 23.

Rule 44

Plaintiff did not show the Rule is unreasonable. Plaintiff did not show a speaker was required to provide a real name, or that a speaker would not be permitted to speak if the speaker provided an identifier rather than a real name.

The Brown Act rule was not violated due to a person not having the opportunity to respond to another speaker's comments. The Brown Act only requires the Board to provide a speaker with an opportunity to address an item of interest. Requiring a cutoff time for a speaker to provide a request form does not strip a person of the right to address the Board.

Plaintiff has not shown the Rule is unreasonable or violates the Brown Act on this ground. Further, balancing the potential harm weighs in favor of Defendants.

The Motion is denied as to Rule 44.

Rule 46

This Rule requires a speaker to obtain permission from the Chair before addressing an individual Board member. The Rule provides no guidelines or objective standards for the Chair in determining whether to grant permission to a speaker to address a member individually.

No party showed what information is elicited before the Chair determines whether to grant a speaker permission to address a Board member individually. Defendants offered no evidence to show how the Chair determines whether to permit a speaker to address an individual Board or staff member. Defendants offered no evidence to contradict Plaintiff's showing that the Chair enforces the prohibition against those critical of the Board and grants permission to those who are complimentary.

Plaintiff met its burden to show it is likely to prevail on the claim that the Rule is unreasonable, and in turn, unconstitutional. Further, balancing the potential harm weighs in Plaintiff's favor.

The Motion is granted as to Rule 46. Defendants are enjoined from enforcing the portion of this Rule that states, "All remarks and questions shall be addressed to the Board as a whole and not to any individual Board member. No question shall be asked of any Board or staff member without first

obtaining permission of the Chair.”

Rule 47

Plaintiffs contend the Rule violates the Brown Act in that there is no objective standard for determining the amount of reduced time a speaker may speak. Plaintiffs also contend the Brown Act is violated because a speaker is limited to speak three times, regardless of the number of items on the agenda.

The Chair is in the best position to determine whether the number of speakers, in conjunction with what is on the agenda for that meeting, would prevent the Board from accomplishing its business in a reasonably efficient manner. There is no abuse based on content written into the Rule. Speakers are still permitted to address the Board, just with a shorter time period. Furthermore, Plaintiff has not shown the time restriction is determined based on the speaker’s content or that the Rule is enforced arbitrarily.

Plaintiff did not meet its burden to show the Rule is unreasonable and has not shown a likelihood of prevailing on the merits as to Plaintiff’s claims as it relates to this Rule. Further, the balancing of the potential harms weighs in favor of Defendants.

The Motion is denied as to Rule 47.

Rule 48

Plaintiff takes issue with the designation that all recordings from security cameras are confidential and not public records. Defendants contend the security footage is exempt from disclosure. Defendant showed the meetings are monitored by security cameras to provide security for the Board. The recordings by the security cameras are monitored by the Sheriff’s officers. As such, the exemption applies to the recordings by the security cameras. Defendants showed disclosure would create an unnecessary risk to public safety.

Plaintiff did not meet its burden of showing a likelihood of prevailing on its claim that this Rule violates CPRA or CPRA’s purpose. Because inspection under the Brown Act is subject to inspection pursuant to CPRA, and the recordings at issue are exempt from inspection, Plaintiff has not shown a likelihood of prevailing on the merits on its claim that Rule 48 violates the Brown Act. Further, balancing of the potential harms weighs in favor of Defendants.

The Motion is denied as to Rule 48.

Records Management Policy

Plaintiff takes issue with the definition of “transitory records” and the exclusion of such transitory records from the retention policy.

Neither the CPRA nor the Brown Act include exemptions based on the definition of transitory records used in the Records Policy. Though the CPRA provides for inspection at all times, Government Code section 26202 sets a two-year retention period for documents prepared or received in any manner other than pursuant to a state statute or county charter. Defendants contend the Records Policy falls within the exception set forth in Government Code section 26205.1(a)(1), which permits the destruction of nonjudicial public records, documents, instruments, books, and papers provided certain conditions are satisfied.

Defendants have not shown the documents encompassed by the definition of transitory records are not required to be preserved by law, or that the destroyed records are preserved in accordance with subdivision (b) of Government Code section 26205.1. Plaintiff has met its burden of showing a likelihood of prevailing on the merits of this claim. Further, the balancing of harm weighs in favor of Plaintiff.

The Motion is granted as to the Records Policy.

Plaintiff shall serve and submit a Proposed Order consistent with this ruling within ten days.

Court ordered the courtroom clerk to give electronic notice. Entered: 3/JUL/2019