



## Agenda Report

19-1383

Agenda Date: 12/3/2019

### REPORT TO COUNCIL

#### SUBJECT

Discussion and Possible Action on Report from City Attorney on Taking Action by Council Consensus

#### BACKGROUND

At the Governance and Ethics Committee (Committee) meeting held on October 24, 2019, the Committee discussed potentially updating Council Policy 030 entitled "Adding an Item on the Agenda" (Attachment 1). During the discussion, the Committee inquired about the process to have an item placed on the agenda, as well as to have that item worked on and acted on. The Committee also asked for clarification on whether the City Council could refer an item to a future City Council meeting by Council consensus or by a majority vote of the City Council. The Committee requested that the City Attorney report back on the definition of "Council consensus" and what action the City Council can take by "Council consensus" versus by a majority vote of the City Council.

This item was referred from the November 21, 2019 Governance and Ethics Committee meeting to the December 3, 2019 City Council Special meeting for discussion.

#### DISCUSSION

Council Policy 030 "Adding an Item on the Agenda" addresses the various ways in which an item can be added to a Council meeting agenda by the Mayor or a Council Member. In the scenario where an issue is raised during Public Presentations by a member of the public, the Council Policy states that either the Mayor or a "consensus of the City Council" can refer the issue to the City Manager for inclusion on a future agenda. If an issue is raised by Written Petition to Council, then a "simple majority vote" can place the item on a future agenda for discussion. The Policy does not contain a definition of the term "consensus."

There is no process under the Brown Act that refers to a legislative body taking action by consensus. However, the Brown Act specifically allows a legislative body to take the following actions in response to an item that is not on the agenda:

Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

Government Code Section 54954.2(a)(3)

The City Attorney's Office has been unable to determine the origin of this concept of Council consensus. Neither do Robert's Rules of Order shed any light on the process. It appears that the

notion is somewhat unique to Santa Clara. That said, based upon the language of Section 54954.2, the current "Council consensus" process to place an item on a future agenda (not to take action on an item) does not appear to violate the Brown Act. However, as a matter of record-keeping, and in light of the relatively recent switch to the action minutes format, it would be more clear to place a referral or item on a future agenda via a motion and vote.

In conclusion, Council may take action to place matters on a future agenda even if the matter does not appear on a Council agenda. Discussion of the matter should simply be limited to placing it on a future agenda and should not involve an extensive, substantive discussion of the issue itself. The Council may take the actions described in Government Code Section 54954.2(a)(3) by usual motion. If the Council wishes to continue with taking action "by consensus," it would be advisable to clarify how this process actually works by amending Council Policy 030.

### **ENVIRONMENTAL REVIEW**

This is an information report only and no action is being taken by the City Council and no environmental review under the California Environmental Quality Act ("CEQA") is required.

### **FISCAL IMPACT**

There is no fiscal impact to the City other than administrative staff time.

### **PUBLIC CONTACT**

Public contact was made by posting the City Council agenda on the City's official-notice bulletin board outside City Hall Council Chambers. A complete agenda packet is available on the City's website and in the City Clerk's Office at least 72 hours prior to a Regular Meeting and 24 hours prior to a Special Meeting. A hard copy of any agenda report may be requested by contacting the City Clerk's Office at (408) 615-2220, email [clerk@santaclaraca.gov](mailto:clerk@santaclaraca.gov) or at the public information desk at any City of Santa Clara public library.

### **RECOMMENDATION**

Note and file the report.

Reviewed by: Sujata Reuter, Assistant City Attorney

Approved by: Brian Doyle, City Attorney

### **ATTACHMENTS**

1. Council Policy 030 - Adding an Item on the Agenda