

February 25, 2019

Subj: Brown Act "Cure and Correct Demand Letter".

*Presiding Officer,  
City Council Members, City Manager, City Clerk & City Attorney*

*Dear Mayor Amato,*

*This letter is to call your attention to what I believe have been a series of actions during past City Council Meeting Open Sessions that directly violate central provisions of the Ralph M. Brown Act; actions when taken cumulatively, violate both the spirit & purpose of this act. [1,2]*

*The most recent alleged violation occurred during the 2/12/2019 City Council Open Session and the nature of these violations are innumeraed below.*

*Note: Each item listed below should be taken as an individual "Brown Act "Cure and Correct Demand". [5]*

*Item 1:*

*Denial of the right to public comment on an agenda item **before or during** its consideration in the City Council Meeting Open-Session on 2/12/2019.*

*With regard to Item 1, prior to the Open Session on 2/12/2019 I read the agenda and noticed that there was an item for a status report on the Hermosa Avenue Paving-Project.*

*I immediately sent the city council an email with a list of questions that I believed would shed-light on why so many heavy trucks were **not** using the truck route specified by HB Public Works and rather were using 27th street at all hours of the day and night.*

*I asked in that email that the council either ask these questions themselves or give me the opportunity to do so, either before or at the conclusion of the staff presentation.*

*Staff presentations constitute an agenda-item.*

*I was not given the opportunity to speak before or during the staff presentation as required by the Brown Act nor was there any request for staff to follow-up on my questions and suggestions.*

*The Brown Act specifies that public comment must be heard either before or at the time the agenda item is being discussed or considered. [ 2 ].*

*Moreover, Court rulings interpret what constitutes an “agenda-item” broadly and in a way that includes staff reports and written communications. [ 6 ].*

*I respectfully demand that members of the public be **consistently** given an opportunity to speak to any and **all** city council agenda items for at least 2 minutes per agenda item.*

*Item 2:*

*Denial of the right to comment **on more than one agendum item** before or during its consideration in Open Session.*

*With regard to item 2, Court rulings provide members of the public an opportunity to speak for a minimum of 2 minutes per agenda item. The State Attorney General has recommended 5 minutes. [ 2 ]*

*But the city has imposed administrative procedures that have the effect of limiting the right to speak to **only one** agenda item per Open Session and that is a violation of the Brown Act.*

*The city may not adopt rules that constrain a member of the public from its right to speak for a minimum of 2 minutes on any agenda item providing the comments are germane to the agenda item and within the scope of the council’s jurisdiction. [3,4 ]*

*Any City Council meeting bylaws that serve to restrict or dilute the public-right to speak to more than one agendum item per Open Session for a minimum of two minutes each is a violation of the intent of the Brown Act.*

*I demand that the city correct any administrative procedures that would have tend to have the effect of limiting a citizen’s opportunity to speak to more than one agenda item per Open Session of the City Council unless there is a legal basis and a compelling reason to do so.*

*Item 3:*

*Using the Brown Act to justify denying the public's right to ask council members questions on **Open Session Agenda** Items.*

*With regard to Item 3 above, the Brown Act is clear on the reasons and purposes for restricting questions to the city council on **non-agenda** items during the Open-Session Public Comment Period.*

*Public questions to the city council about **non-agenda** items must be limited to the questions necessary to determine if a subject should be added to a future city council meeting agenda.*

*However, there is **NO** blanket restriction on public questions to the council imposed by the Brown Act.*

*And more to the point, there is **NO** Brown Act restriction on asking city council members questions on **Open Session Agenda** Items.*

*Any attempt to use the Brown Act to shield the council from the public's questions is a mischaracterization of the intent of the Brown Act and a misapplication of the law and runs directly counter to the over-arching purposes of the Brown Act itself. [1,2].*

*The council members are within their right NOT to answer questions on Agenda Items, but the public has a right to know that a council member is refusing to answer certain questions, and obfuscating this knowledge with administrative regulations runs counter to the core-principles of the Brown Act. [1,2 ].*

*A no-response is a response of sorts and that may drive how a citizen votes in the next city council election.*

*And if the question is not germane to an Agenda Item or not within the scope of the council's jurisdiction, the city is always represented by legal counsel at Open-Session so the city attorney or his/her designee can object to an illegitimate question or caution a council member not to respond.*

*Therefore, it follows that the city clerk, when announcing the restrictions on questions to council members for **NON**-agenda items; the city clerk must balance this by informing the public clearly **and unambiguously that** the Brown Act does not prohibit questions to council members when an **agenda-item** is being considered.*

*In conclusion, the purpose of the Brown Act is to promote transparency and public participation in local government.*

*The opportunity to ask questions in open-session related to agenda-items should be maximized and not minimized whenever possible. [ 2 ]*

Thank You,  
Anthony Higgins

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#### **Footnote [1]**

Section 54950, Public commissions, boards, councils and other legislative bodies of local government agencies exist to aid in the conduct of the people's business. The people do not yield their sovereignty to the bodies that serve them. The people insist on remaining informed to retain control over the legislative bodies they have created.

The people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.

Regarding this the Official State Brown Act Pamphlet it says the following regarding the central purposes of the Brown Act:

2)

[http://ag.ca.gov/publications/2003\\_Intro\\_BrownAct.pdf](http://ag.ca.gov/publications/2003_Intro_BrownAct.pdf)

*.... As the rest of this pamphlet will indicate, the Legislature has established a presumption in favor of public access. As the courts have stated, the purpose of the Brown Act is to facilitate public participation in local government decisions and to curb misuse of the democratic process by secret legislation by public bodies. (Cohan v. City of Thousand Oaks (1994))*

30 Cal.App.4th 547, 555.) To these ends, the Brown Act imposes an “open meeting” requirement on local legislative bodies. (§ 54953 (a); Boyle v. City of Redondo Beach (1999) 70 Cal.App.4th 1109, 1116.)

*Ralph M. Brown Act (Government Code)*

*In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and the other public agencies in this State exist to aid in the conduct of the people’s business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly. The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. **The people insist on remaining informed so that they may retain control over the instruments they have created***

#### **Footnote [2]**

Section 54953.7 Greater Openness Encouraged

Notwithstanding any other provision of law, legislative bodies of local agencies may impose requirements upon themselves which allow greater access to their meetings than prescribed by the minimal standards set forth in this chapter. In addition thereto, an elected legislative body of a local agency may impose such requirements on those appointed legislative bodies of the local agency of which all or a majority of the members are appointed by or under the authority of the elected legislative body.

#### **54954.3 PUBLIC TESTIMONY:**

Public may comment on agenda items before or during consideration by legislative body.

#### **Footnote [3]**

Time must be set aside for public to comment on any other matters under the body’s jurisdiction.

Government Code section 54954.3 requires that “every agenda” for the board’s 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

**Footnote [4]**

Section 54954.3 Opportunity for public to address legislative body

(a) 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, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2.

However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the legislative body. Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt **reasonable** regulations to ensure that the intent of sub-division (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

*Note paragraph b. above refers to limiting the time a member of the public has to speak to a particular agenda item and in no way authorizes the city to restrict a member from speaking to more than one agenda item.*

**Footnote [5]**

Brown Act Cure & Correct Demand Letters

A Cure and Correct Letter must be sent within 30 days of alleged Brown Act violations occurring at open and public meetings or within 90 days of alleged violations that do not occur at open and public meetings.

The Legislative body must correct action within 30 days of receiving the letter and inform the demanding party in writing of its action or decision not to take action.

No response for 30 days is considered a decision by the legislative body not to take action.

Any litigation challenging the legislative body's response to the cure and correct demand letter must be taken within 15 days of the body's official written response, or within 15 days of the day the legislative body's 30-day response deadline passes.

A court may award court costs and reasonable attorney fees to the plaintiff in an action brought pursuant to Section 54960 or 54960.1, or 54960.2 where it is found that a legislative body of the local agency has violated this chapter.

Additionally, when an action brought pursuant to Section 54960.2 is dismissed with prejudice because a legislative body has provided an unconditional commitment pursuant to paragraph (1) of subdivision (c) of that section at any time after the 30-day period for making such a commitment has expired, the court shall award court costs and reasonable attorney fees to the plaintiff if the filing of that action caused the legislative body to issue the unconditional commitment. The costs and fees shall be paid by the local agency and shall not become a personal liability of any public officer or employee of the local agency.

#### **Footnote [6]**

General agenda items such as "New Business," "Old Business," "Executive Officer's Report," "Committee Reports," "President's Report,"

"Miscellaneous," etc., without specifying the particular matters thereunder, lack sufficient specificity to meet the standards of the Open Meeting Act and cannot be used to circumvent the notice requirement of a specific agenda. The Office of the Attorney General has opined that:

"... the purpose of subdivision (b) [of Government Code Section 11125] is to provide advance information to interested members of the public concerning the state body's anticipated business in order that they may

attend the meeting or take whatever other action they deem appropriate under the circumstances.

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"We believe that Section 11125 was and is intended to nullify the need for . . . guesswork or further inquiry on the part of the interested public." (67 Ops.Cal.Atty.Gen. 85, 87)

Items not included on the agenda may not be acted on or discussed, even if no action is to be taken by the agency. However, we offer two suggestions so members of the public and board members may raise issues that are not on the agenda.

We strongly encourage boards to include an item on their agendas for "Public Comment on Matters Not on the Agenda." This gives persons who are attending a meeting an opportunity to raise any issues they may have, which may not be on the agenda, but which may be appropriate for future board discussion. Matters raised under this agenda item should be discussed only to the extent necessary to determine whether they should be made an agenda item at a future meeting. (§11125.7(a))

It must be reiterated that no action may be taken on any such item and discussion is limited to that which is necessary to make the determination as to whether the item will be added to a future board agenda.

The Office of the Attorney General has opined that:

"... the purpose of subdivision (b) [of Government Code Section 11125] is to provide advance information to interested members of the public concerning the state body's anticipated business in order that they may have Opportunity for Public Comment at Meetings

Section 11125.7 addresses the subject of public comment at board meetings. With specified exceptions, that section requires state agencies to provide an opportunity for members of the public to directly address the state agency on each agenda item before or during the agency's discussion or consideration of the item. This opportunity for comment need not be made available if:

1. The agenda item has previously been considered at a public meeting by a committee comprised exclusively of board members, where members of the public were provided an opportunity to address the item. However, if the item has been substantially changed since the committee meeting, a new opportunity to address the agency would be required at the full board meeting.



2. The agenda item is one that may properly be considered in closed session, which would include deliberation and action on disciplinary proceedings under the Administrative Procedure Act. (§11125.7)

If a board wishes to establish a standing rule that discussion of agenda items will be given a specified amount of time, or that public comment will be limited to a certain amount of time, the board may do that by adopting an administrative regulation. (§11125.7(b))

But these time restrictions may not be onerous to the point that they unnecessarily circumvent the other central purposes of the Brown Act.