

3/26/19 AGENDA, ITEM 2m - BROWN ACT COMPLAINT FILED BY ANTHONY HIGGINS
SUPPLEMENTAL LETTER SUBMITTED BY ANTHONY HIGGINS TO THE CITY MANAGER'S
OFFICE ON 3/26/19 AT 9:45 A.M.

March 26, 2019

To: City Attorney Michael Jenkins
City Manager Suja Lowenthal
City Council Members

Fm: Anthony Higgins

Subj: Draft Response to my Brown Act Cure and Correct Demand &
Recommendation (Report 19-0197)

Thank You for taking the time address the 3 Brown Act Cure and Correct demands
contained in my February 25, 2019 complaint.

I accept your conclusions that no Brown Act violations occurred with the following
caveats:

Item 1 of my Complaint:

Right to Speak before or during staff-reports

City Attorney Draft Response:

The speaker card you completed and submitted to the City Clerk at the outset of the February 25, 2019 meeting stated in your handwriting that you wished to speak during the "Public Participation Topic" regarding the "Hermosa Avenue Project Truck Route." The speaker card specifically does not state that you wished to speak during the City Manager's Report. Consequently, it was entirely reasonable for the City Clerk and the Mayor to interpret your speaker card to mean that you wished to speak during Oral Communications; and in fact, you were called upon to speak (for not more than three minutes) during Oral Communications and did so on the subject of the Hermosa Avenue Project Truck Route. Had your speaker card clearly stated that you wished to speak during the City Manager's Report agenda item, you would have been called when that item was taken up.

I would like to make three other observations. First, the City Manager's Report is a unilateral and purely informational report that engenders no action by the Council. Second, had you spoken up in some manner at the conclusion of the City Manager's Report to indicate that you wished to speak during that agenda item, you would have been allowed to do so. And third, when you did speak during Oral Communications immediately following the City Manager's report, you did not raise any concerns about not being given an opportunity to speak during the City Manager's Report.

I believe my desire to speak during the agenda-item was abundantly clear in my email to the Council and the City Manager.

But I failed to copy the city clerk on that email.

I believe the city clerk was aware of this email but she must have felt that the card superseded my email request to speak during the agenda item.

Therefore, I accept that explanation and concur there was no Brown Act Violation.

However, please note that I filled out the speaker-card only as a contingency were I not called up to speak during or before the agenda item per my email request.

I did not know that I could stand up and stop the proceedings and be recognized by the council at the conclusion of the City Manager's Report.

Item 2 of my complaint:

Right to speak in both oral communications segment of the Council Meeting Open Session as well as any agenda items.

City Attorney Draft Response:

".... In short, there is no procedure that limits public comment to just one agenda item per meeting. Consequently, there is no need for the Council to cure or correct any practice".

COMMENTS:

In my complaint I assert that the city does not provide the opportunity to speak in the oral communications segment of the Open-Session and then to an agenda item.

I accept the cities explanation the Council Does Not Limit the Right of The Public to Speak on Only One Agenda Item Per Session and withdraw this complaint.

What created my confusion was that at the conclusion of each agenda item the council does not always ask if there are public-comments.

Nor did I realize that I could submit more than one speaker-card per Open-Session meeting as a tool to facilitate speaking to multiple items

The city might consider making this clearer.

Item 3 of my Complaint:

Clarity on a citizen's right to ask certain questions related to oral and written-communications.

City Attorney Response:

"Item 3" of your letter does not claim the Council violated the Brown Act. Rather, you demand "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." The Brown Act does not require the City Clerk to make any announcements regarding the content of public speech. And, except to the extent that public speech be relevant to the subject matter of the agenda item and within the jurisdiction of the Council, neither does the Brown Act address whether public speakers make affirmative statements or ask questions.

And, finally, the Act does not require Councilmembers to answer questions raised by public comments.

Consequently, there is no need to cure or correct any practice identified in your Item 3.

My Response:

A key tenant of the Brown Act is to promote transparent and accountable government.

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.

My take-away is that while council members cannot be compelled to answer questions regarding justifications for NOT recommending that an issue covered in a written or oral communication be ‘agendized” and/or referred to staff for further analysis, there is nothing in the brown act that would prohibit me from asking council members for their justification for tabling an issue.

There are many reasons understanding a council-persons specific justifications for not “agendizing” an item or referring it to staff for further analysis serves the public interest.

I believe that when a citizen requests that an issue be agendized or referred to staff for followup and the council chooses to bury it in the public record with no further action this justification should be provided by each council person as a matter of practice.

I will be speaking to this point in tonight’s council meeting.

I appreciate that you have seriously considered my complaint and appreciate the city's efforts in this regard.

Thank You
Anthony Higgins