

309 Cedar PMB #14B  
Santa Cruz, CA 95060

September 27, 2004

Mayor Scott Kennedy  
809 Center St.  
Santa Cruz, CA 95060

Dear Mayor Kennedy,

I formally request that you correct the Brown Act violations that occurred at the July 13, 2004 City Council meeting during the Afternoon Session.

Specially, items ##6 CVC funding #7: Social Service Program Contract #15: Lighthouse Field Restroom Improvement Project & #21 Patriot Act Day Endorsement were denied any meaningful public comment period in violation of Sections 54954.3(a) and 54954(c) of the Ralph M. Brown Act in the Government Code. Those were the items that I specifically requested brief speaking time on as mandated by law.

Instead of allowing me to speak on these items, you placed them at a time uncertain many hours ahead, making it impossible, as a practical matter, to address them as is my right. This violates Section 5.4954.3(a) which provides "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 ordering the legislative body's consideration of the item..."

The only item that I pulled from the consent agenda that you did allow me to speak on (item #11) was one which several business owners (Steve Dietrick and Peggy Overbeck)--whose position you supported--were also interested in addressing. Other speakers, though lone speakers on individual items --such as Mr. Eselius who was the only speaker on item #3, and Mr. Geiger who was the only speaker on item #18--were granted customary access to pulled agendas on the consent agenda in a timely fashion.

I, on the other hand, who had requested brief comment on the four items mentioned was treated significantly differently--continuing a pattern of discouraging my public comment, even though it is lawful, orderly, and brief. This kind of preferential discrimination violates Section 54954(c) which provides "The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body..."

Further, though you stated that the items I had asked to speak on (## 6, 7, 15, & 21) would be placed "at the end of the afternoon agenda", you abruptly changed the order several hours later when I was not in the room. Though the afternoon agenda contained thirty-two items, you interrupted item #27 and returned to the four pulled items, which the Council then quickly passed with no public input allowed me (nor to anyone else who took seriously the instructions you gave earlier). You did this with the clear knowledge

that I had pulled those items, that I had requested to speak on them, and that I was not in the room. In intentionally excluding any possible input from me, you violated Section 5.4954.3(a). In so far as this was done specifically to exclude my input, you also violated Section 54954(c).

In a previous letter, I criticized this practice of postponing selected consent agenda items for many hours to a time uncertain in order to discourage critics. I renew my criticism and my belief that this is an illegal practice. Few people would have the time and patience to wait two or three hours (possibly more) to wait until the end of the afternoon agenda to speak on items normally heard shortly after 3 PM. However, your capricious and arbitrary decision to insert those items in the midst of other agenda items, made any kind of public comment impossible--except for those who happened to be in the room at the moment you switched topics.

I request that these Brown Act violations be cured or corrected within 30 days by rehearing the item with adequate notice and adequate time for public input at a time certain. I also request you refrain from repeating such consent agenda manipulations in the future. The practice discourages public participation and leaves those who attend meetings or watch them on community television with the impression that City Council, under your chairmanship, is only willing to allow timely input from those with whom they agree.

In the past few years, the Mayor and City Council have routinely ignored earlier Brown Act correction requests, in my case, not even giving the courtesy of a response. If you refuse to correct the Brown Act violations mentioned above, please clarify in writing your rationale for selectively denying me personally the opportunity to speak on Consent Agenda items and whether you will be continuing this "you may speak only if you wait many hours until an uncertain time" procedure in the future.

Sincerely,  
Robert Norse (423-4833)

P.S. In a letter dated September 17<sup>th</sup> itemizing Brown Act violations in your July 27<sup>th</sup> meeting, I referred to an "item #11". That item was not on the July 27<sup>th</sup> agenda--but was actually on the July 13<sup>th</sup> agenda. I apologize for any confusion this may have caused.

*Cc: Santa Cruz Sentinel, Santa Cruz Metro, Grand Jury, D.A. Bob Lee, San Jose Mercury News, Terry Franke, First Amendment Foundation, Good Times, Mid-County Post, City on a Hill Press*