

Chief John Ferreira
Cal Fire/Santa Cruz County Fire
As Staff to the Santa Cruz County Fire Department Advisory Commission
Or other Staff member to the Commission

November 2, 2010

John,

Please find enclosed four (4) individual demands to the Fire Department Advisory Commission to cure or correct violations of the Brown Act.

Each demand speaks to a single violation of the Act.

Individuals on the CC list will receive individual cover letters.

Thank you for your anticipated cooperation in this matter,

Sincerely,

Russ Mackey

Russ Mackev

November 1, 2010

Fire Department Advisory Commission
Post Office Drawer F-2
Felton CA 95018

ATTENTION: John Ferreira, Chief of Santa Cruz County Fire, as Staff to the Santa Cruz County Fire Department Advisory Commission.

Dear Chief Ferreira,

RE: Suspending construction of a Fall Creek Apparatus Building

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Santa Cruz County Fire Department Advisory Commission (FDAC).

The nature of the violation is as follows: In its meeting of October 13, 2010, the Fire Department Advisory Commission took action to "Recommend suspension of the construction of an Apparatus Building at the Fall Creek Cal Fire Station, by a formal vote of the Fire Department Advisory Commission Commissioners".

The action taken was not in compliance with the Brown Act because there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and there was no finding of fact made by the Fire Department Advisory Commission that urgent action was necessary on a matter unforeseen at the time the agenda was posted.

In the event it appears to you that the conduct of the Fire Department Advisory Commission specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

As you are aware, 1986 amendments to the Brown Act created specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon, and also created a legal remedy for illegally taken actions, namely the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), I demand that the Fire Department Advisory Commission cure and correct the illegally taken action as follows:

1. Advise all parties who have been notified of, or relied upon this action of the Fire Department Advisory Commission, that the action was not in compliance with applicable provisions of the Brown Act.
2. Formally announce and explain at the next meeting of the Fire Department Advisory Commission that the action was not in compliance with applicable provisions of the Brown Act.

As provided by Section 54960.1 you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would seek the award of court costs and reasonable attorney fees pursuant to Section 54960.5.

Respectfully yours,

Russ Mackey

CC:

Phil Passafuime <phil@dpb-law.com>

PressBanner <pbeditor@pressbanner.com>

Kurtis Alexander <kalexander@santacruzsentinel.com>,

Julie Copeland <jcopeland@santacruzsentinel.com>

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Friends of Bonny Doon Fire <FriendsFeedback@comcast.net>

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Santa Cruz County Board of Supervisors

Supervisor Neal Coonerty <BDS031@co.santa-cruz.ca.us>

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Supervisor Pirie <ellen.pirie@co.santa-cruz.ca.us>

Supervisor John Leopold <john.leopold@co.santa-cruz.ca.us>

Supervisor Mark Stone <mark.stone@co.santa-cruz.ca.us>

Enc: FDAC Agenda for October 13, 2010

Russ Mackey

November 1, 2010

Fire Department Advisory Commission
Post Office Drawer F-2
Felton CA 95018

ATTENTION: John Ferreira, Chief of Santa Cruz County Fire, as Staff to the Santa Cruz County Fire Department Advisory Commission.

Dear Chief Ferreira,

RE: Failure to vote by rollcall

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Fire Department Advisory Commission.

The nature of the violation is as follows: the October 13, 2010 meeting of the Fire Department Advisory Commission failed to conduct voting on motions by rollcall.

The actions taken on October 13, 2010 were not in compliance with the Brown Act because of failure to comply with Brown Act Section 54953(b) (2);

**54953. Open meetings required; Teleconferencing; Secret ballots
(b) (2) Teleconferencing, as authorized by this section, may be used for all purposes in connection with any meeting within the subject matter jurisdiction of the legislative body. All votes taken during a teleconferenced meeting shall be by rollcall.**

In the event it appears to you that the conduct of the Fire Department Advisory Commission specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

Pursuant to that provision (Government Code Section 54960.1), I demand that the Fire Department Advisory Commission cure and correct the illegally taken actions as follows:

1. Advise all parties who have been notified of, or relied upon actions of the Fire Department Advisory Commission on October 13, 2010, that voting on that date was not in compliance with applicable provisions of the Brown Act.

2. Formally announce and explain at the next meeting of the Fire Department Advisory Commission that the voting on October 13, 2010 was not in compliance with applicable provisions of the Brown Act.

As provided by Section 54960.1 you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would seek the award of court costs and reasonable attorney fees pursuant to Section 54960.5.

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Enc: FDAC Agenda for October 13, 2010

Russ Mackey

November 1, 2010

Fire Department Advisory Commission
Post Office Drawer F-2
Felton CA 95018

ATTENTION: John Ferreira, Chief of Santa Cruz County Fire, as Staff to the Santa Cruz County Fire Department Advisory Commission.

Dear Chief Ferreira,

RE: Amador period use of McDermott Volunteer Fire Station

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Santa Cruz County Fire Department Advisory Commission (FDAC).

The nature of the violation is as follows: In its meeting of October 13, 2010, the Fire Department Advisory Commission took action to "Recommend the use of the McDermott Volunteer Fire Station to house a fire engine manned by Cal Fire employees during the Amador period, by a formal vote of the Fire Department Advisory Commission Commissioners".

The action taken was not in compliance with the Brown Act because there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and there was no finding of fact made by the Fire Department Advisory Commission that urgent action was necessary on a matter unforeseen at the time the agenda was posted.

In the event it appears to you that the conduct of the Fire Department Advisory Commission specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

As you are aware, 1986 amendments to the Brown Act created specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon, and also created a legal remedy for illegally taken actions, namely the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), I demand that the Fire Department Advisory Commission cure and correct the illegally taken action as follows:

1. Advise all parties who have been notified of, or relied upon this action of the Fire Department Advisory Commission, that the action was not in compliance with applicable provisions of the Brown Act.
2. Formally announce and explain at the next meeting of the Fire Department Advisory Commission that the action was not in compliance with applicable provisions of the Brown Act.

As provided by Section 54960.1 you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would seek the award of court costs and reasonable attorney fees pursuant to Section 54960.5.

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Enc: FDAC Agenda for October 13, 2010

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Fire Department Advisory Commission
Post Office Drawer F-2
Felton CA 95018

ATTENTION: John Ferreira, Chief of Santa Cruz County Fire, as Staff to the Santa Cruz County Fire Department Advisory Commission.

Dear Chief Ferreira,

RE: Purchase of Water Tender

This letter is to call your attention to what I believe was a substantial violation of a central provision of the Ralph M. Brown Act, one which may jeopardize the finality of the action taken by the Santa Cruz County Fire Department Advisory Commission (FDAC).

The nature of the violation is as follows: In its meeting of October 13, 2010, the Fire Department Advisory Commission took action to "Recommend the purchase of a water tender during this fiscal year, by a formal vote of the Fire Department Advisory Commission Commissioners".

The action taken was not in compliance with the Brown Act because there was no adequate notice to the public on the posted agenda for the meeting that the matter acted upon would be discussed, and there was no finding of fact made by the Fire Department Advisory Commission that urgent action was necessary on a matter unforeseen at the time the agenda was posted.

In the event it appears to you that the conduct of the Fire Department Advisory Commission specified herein did not amount to the taking of action, I call your attention to Section 54952.6, which defines "action taken" for the purposes of the Act expansively, i.e. as "a collective decision made by a majority of the members of a legislative body, a collective commitment or promise by a majority of the members of a legislative body to make a positive or negative decision, or an actual vote by a majority of the members of a legislative body when sitting as a body or entity, upon a motion, proposal, resolution, order or ordinance."

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1. Advise all parties who have been notified of, or relied upon this action of the Fire Department Advisory Commission, that the action was not in compliance with applicable provisions of the Brown Act.

2. Formally announce and explain at the next meeting of the Fire Department Advisory Commission that the action was not in compliance with applicable provisions of the Brown Act.

As provided by Section 54960.1 you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would seek the award of court costs and reasonable attorney fees pursuant to Section 54960.5.

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