

City Council 1992

# Brown Act complaint examined

## City Council retreat leads to investigation by DA

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SANTA CRUZ — The district attorney has launched an investigation into whether the City Council violated state law during a recent retreat and on other occasions.

The investigation began Tuesday after formal complaints were filed with the District Attorney's Office, accusing the council of violating the state's Brown Act by making decisions in secret, outside public view.



Art Danner  
'Need to be careful'

"We need to be careful because these are allegations only and it takes an extraordinary amount of evidence to sustain this type of complaint," District Attorney Art Danner said.

"There are separate allegations made. A reason we're looking at it is to see if it suggests a pattern (of behavior)."

Mayor Don Lane did not return telephone calls to comment on the investigation.

A criminal violation of the Brown Act is a misdemeanor, but Danner said prosecuting such allegations is exceptionally difficult as it must be proved that council members intentionally violated the law.

There has never been a successful criminal prosecution of the Brown Act. Civil penalties are more common, and one avenue is to force the city or agency to redo the meeting in its entirety.

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# Brown Act

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The first complaint was filed by former Santa Cruz Mayor Ted Foster, over a day-long "retreat" the council took at the Santa Cruz Yacht Club on Feb. 4.

Foster, who served as mayor from 1959-60, requested a detailed response on the meeting from Lane, and was sent a summary of the meeting in return. Foster said the response was unsatisfactory and filed a complaint with the district attorney. Any citizen can file such a complaint under the law.

Foster said after the criminal investigation, regardless of the outcome, he will seek civil action in the courts to force the council to hold the meeting again in public view, including the presence of a facilitator who was paid \$1,200 for a day's work.

"My first priority is that no other illegal meeting take place," Foster said. "I want to see a complete minutes (record) produced and to see every detail (of what happened at the meeting)."

Danner would not release the contents of the second complaint, saying it could jeopardize the investigation, nor would he say who filed it.

Mayor Lane steadfastly maintains that the council notified the public of the retreat and did not violate the Brown Act.

No members of the public or the press showed up at the retreat, however, and examination of the retreat notification shows a series of "oversights" and failures to conform with city procedures when posting the notice.

The only public notice was a handwritten note list-

ing the retreat time as 8 p.m. It actually began at 8 a.m. The retreat was left off the official public council calendar because of an "oversight." No agenda was prepared by Lane, or posted, in apparent violation of the Brown Act, and the press was not notified by printed communication, as is normally done.

The only public announcement of the retreat was one sentence uttered at an emergency council meeting on a Wednesday night, with no one from the public in attendance other than officials connected to a city-sponsored housing project.

Lane, under direct questioning, said the retreat was open to the public, but that "I wouldn't be straightforward if I didn't say the idea is to be in session without a lot of public attention."

When asked what he would have done had the press showed up, he said, "I would have probably asked them to leave."

Councilman Louis Rittenhouse said Tuesday he felt the district attorney's investigation is justified.

"I think it's appropriate," Rittenhouse said. "I have to point my finger at the mayor, because he's in charge of the agenda and he has to make sure things are done properly."

Rittenhouse was not at the retreat, but other council members said they assumed the retreat was properly noticed.

In a letter to Foster, Lane reviewed the meeting and listed participants which included all of the city department heads. Discussion, according to Lane, included how the staff and council could communicate better and run business more efficiently.