

Angel Rodriguez

From: Joe Beninato <[REDACTED]>
Sent: Friday, July 2, 2021 6:19 PM
To: Public Comment
Cc: Jolie Houston
Subject: Public Comment - Agenda Item 1 regarding the Council Norms Study Session July 13, 2021

Hello Mayor Fligor, Vice Mayor Enander, Councilmember Lee Eng, Councilmember Meadows, Councilmember Weinberg, Interim City Manager Kilger, Incoming City Manager Engeland, Deputy City Manager Maginot, City Clerk Chelemengos and City Attorney Houston,

I have written and commented before on the violations of Council Norms that have occurred in recent years, and this behavior appears to continue. It is well documented by now that Councilmember Lee Eng has violated Council Norms section 6.8 (and most likely the Brown Act as well) by repeatedly sending/receiving electronic messages during City Council meetings. We are all well aware of the infamous Kenan Moos incident from November 24, 2020. I am still awaiting PRA clarification from the City Attorney, but it appears Councilmember Lee Eng was also communicating via text message during the May 25, 2021 Council meeting. There is further video evidence that causes me to believe that these two documented situations are not the exception, but rather the rule.

It is possible other Councilmembers are also using electronic devices during meetings, but I've seen no evidence of this as far as I can recall. Whatever the case, we need to remove the temptation for City Councilmembers to be messaging with others where they can be influenced or manipulated as they are asking questions and taking votes. The Brown Act explicitly states "It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly." Private communications of any form during a meeting are a violation of the Brown Act.

At the May 25, 2021 City Council meeting, Councilmember Enander, when discussing the Moos/Lee Eng matter, agreed with this sentiment by stating "private communication during debate means that one councilmember could have information others don't have or may be persuaded to act in a way outside of public debate...it's not about First Amendment—it's about public transparency." I certainly agree with this statement. However, she then went on to blame Kenan Moos for the situation and a violation of Council Norms, which is not true. Nowhere in the Council Norms does it state that a resident cannot send an electronic message to a Councilmember during a meeting. Given the large number of meetings, it's practically impossible for a member of the public to know that a public official is in a meeting at any given time. The burden must be with the City Councilmember who should not be checking messages under any circumstances.

Then there is the excuse that someone is worried about a sick relative. If a Councilmember is so worried about a relative, they are probably not in the right state of mind to be deciding matters for the city. They should go attend to their relative. And if the relative is out of state and on their death bed, there is nothing a Councilmember could do in the event of a death occurring in the middle of a meeting. I'm sorry to be callous but making up alibis for reading text messages after the fact is both transparent and inappropriate. There should be no room for playing games with the definition of what constitutes an emergency. Jeanine Valadez and others have suggested that emergency family situations could be handled by having a designated "hotline" for family members to call or text in case of emergency that would go to the City Clerk or City Manager. That would easily solve any real emergencies that would occur, which I believe is the intention of the language in the Council Norms.

I believe the only way to control outside influences and Brown Act violations of closed communications during meetings is to ban all electronic devices from city meetings. Some may say "but I need my computer to read documents or take notes." There is no way to guarantee that a computer, phone, tablet or other electronic device is solely being used for

reading documents or taking notes, and based on the documented history in Los Altos, it's clear that something needs to be done. Documents can be printed out in advance, and notes can be taken on paper. This seems to me to be the only way to ensure the Brown Act is not violated. The only exception should be a very rare situation where a Councilmember must attend a meeting from a remote location via videoconference, which should be the rare exception, not the rule. Of course this opens us up to similar issues, but perhaps a Councilmember could affirm under penalty of perjury that they are solely using their device to attend the meeting and will not communicate with any other person.

Which leads me to something that I believe is missing from Council Norms. I believe Councilmember Lee Eng also violated Council Norms section 1.2 by not treating "members of the public...with respect, civility and courtesy." This was the case both on November 24, 2020, when Councilmember Lee Eng falsely accused Kenan Moos of calling her racist (he did not), and when she intimated that she and her family had been threatened (they had not). This also occurred at the May 11, 2021 City Council meeting where Councilmember Lee Eng blamed the entire situation on Kenan Moos and suggested he owed her an apology.

What's to stop a Councilmember from violating any of the Council Norms or even violating the law? There is no mechanism by which a Councilmember can be reprimanded or removed from Council. Let's say electronic devices are banned by Council Norms, and someone decides to ignore the rule. Now what? Or let's say a Councilmember falsely accuses a member of the public of a crime. Or stops coming to meetings. Or any one of a number of other possibilities. The City Council needs to have the ability to rectify these situations. Of course the bar needs to be high to avoid politically motivated actions, but some enforcement mechanism is necessary and warranted, especially in light of all of the Council Norm violations in recent months.

I urge you to rectify these gaping loopholes in our Council Norms to ensure proper functioning of our City government in the coming months and years. Thank you for your consideration.

Joe
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Joe Beninato

