



Open Government Commission

Complaint of Noncompliance - # 1

Open Government Ordinance ("OGO"), the Brown Act or the Public Records Act

Name: SHIRLEY DEAN

Date: MARCH 5, 2021

Mailing Address/
Contact Info: SHIRLEY.DEAN@SBGGLOBAL.NET

Identify the area of noncompliance (check all that apply):

OGO Brown Act Public Records Act

Describe the act(s) of noncompliance. (Attach additional page if more space is needed.)

SEE ATTACHED

List the date(s) on which the noncompliance occurred.

SEE ATTACHED

Describe any steps taken to address the noncompliance directly with City of Berkeley staff and/or elected official, including the name of any staff person involved, if known.

NONE

Documents:

Attach any written requests or complaints submitted to the City and any responses received. You should also attach any additional information that you believe will assist the Commission and staff in reviewing your complaint.

Use this "Complaint of Noncompliance" form if you would like the Open Government Commission to review your complaint and possibly forward their recommendation(s) to the City Council. Filing a Complaint with the Open Government Commission does not constitute a demand to cure or correct under California Government Code § 54960.1.

March 5, 2021

This is to inform the Open Government Commission that I am filing two separate but related complaints, one concerning violations of the letter and spirit of the Brown Act, and the other a violation of fundamental Open Government procedures. Additionally, I am requesting that the Open Government Commission take immediate action to seek a temporary halt to any further discussion, consideration, and action on the subject of ending single family zoning. Such a halt should remain in effect until the violations are examined and subsequent corrections are implemented. Both of these complaints are not meant to change in any way the nature of the subject matter that is involved. My complaints are entirely in regard to the process by which the subject matter was introduced and subsequent actions taken.

Complaint regarding the Brown Act:

February 18, 2021:

The Council's Land Use Committee considered an item entitled *QuadPlex Zoning*, submitted by Councilmembers Droste, Taplin, and Kesarwani as authors, and Mayor Arreguin as a co-sponsor. The item referred to the City Manager and Planning Commission revisions to the zoning code and General Plan that would allow ministerial approved of up to four units in proposed housing developments under certain circumstances. The Committee discussed the item and continued it to a future meeting.

February 23, 2021:

The Council considered an item entitled *Resolution to End Exclusionary Zoning*, submitted by Councilmembers Droste, Taplin, Bartlett and Robinson. The language of this item did not say let's consider whether the City should end single family zoning. Instead, the item stated that ending single family zoning would be the end result, and directs the City Manager and Planning Commission to craft language that would implement that goal. The item was discussed, amended and unanimously approved by the Council. The QuadPlex Zoning item is not included.

March 1, 2021:

The Land Use Council Committee once again considered the *QuadPlex Zoning* item. The February 23 2021 item is almost word for word, including attachments, with the QuadPlex item, it was stated by Councilmember Droste that there hadn't been enough time to include it in the February 23 Council action. However, taken together, the QuadPlex item modifies the February 23 action, by allowing up to four units in single family homes and includes the "by right" concept.

The Land Use Committee is composed of Councilmembers Robinson (chair), Droste and Hahn. Councilmember Droste submitted amendments, including one that was presented only minutes before the starting time of the meeting so that it was entirely unknown to the large number of speakers who wanted to comment. Councilmember Hahn had submitted a series of questions about the QuadPlex item (which now had a new title) and Councilmember Droste had prepared written comments in response, there was much confusion expressed by members of the public. The Committee heard public comments and discussed various aspects in the proposal.

Eventually, Councilmember Hahn indicated that she had to leave the Committee to attend another scheduled meeting but before leaving, indicating that she felt the item needed further consideration by the Committee. However, Councilmembers Droste and Robinson voted to take no action and to refer the matter to the Agenda Committee to schedule the item for a special Council meeting or workshop.

There are now four Councilmembers, Droste, Taplin and Kesarwani as authors of the QuadPlex item and Robinson as Land Use Committee member involved in the discussion of the substance and process of implementing the goal to end single family zoning. Councilmember Droste consistently uses the pronoun “we” in her written responses to Councilmember Hahn’s questions, presumably on behalf of her fellow authors of the QuadPlex item. I have not included Mayor Arreguin in this list because he was a co-sponsor which does not necessarily mean that he was involved in the preparation of that item.

March 4, 2021:

The re-named original QuadPlex item is once again on the agenda of the Land Use Committee. A long and complicated discussion is held as to whether the item was still “live” with the Land Use Committee as the Committee had taken no action and referred it to the Agenda Committee. It was ultimately determined by the Committee with staff input that the item was still under the Committee’s purview. During this discussion, Councilmember Droste stated specifically that she would not withdraw the item and present it to the Agenda Committee with the request that the Council hold a special meeting or workshop even though the Council would be allowed to take action at a special meeting but would not be able to do that at a workshop. She further stated that she had an appointment with Mayor Arreguin that afternoon to discuss the matter and that she would inform the public of what would happen by Monday, March 8, 2021.

By her own admission, there are now five members of the City Council involved in the behind closed doors discussion of the process and substance of implementing the Council’s goal to end single family zoning. This is a violation of the letter and spirit of the Brown Act which can only be resolved by the Council pausing, rescinding earlier actions and taking corrective “do overs”

I request that this complaint be placed on the next agenda of the Open Government Commission. I reserve the right to make amendments to this complaint before that date.