



Open Government Commission

Complaint of Noncompliance # 2

Open Government Ordinance ("OGO"), the Brown Act, the Public Records Act, and the Lobbyist Registration Act

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Date: MARCH 5, 2021

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

- OGO
 Brown Act
 Public Records Act
 Lobbyist Registration 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 the second complaint that I am filing with the Open Government Commission. This complaint involves the violation of fundamental Open Government procedures that concern transparency and the reasonable opportunity for public participation in governmental decisions. These violations bolster my previous statement for the need for a temporary halt to any further discussion, consideration, and action on the subject of ending single family zoning. I feel that such a halt should remain in effect until the violations are examined and subsequent corrections are implemented. I remind you that both of my complaints are not meant to change in any way the nature of the subject that is involved. My complaints are entirely in regard to the process by which the subject was introduced and subsequent actions taken.

A List of Examples of Open Government Procedures That Have Recently Been Violated

1. The public has the right to be fully informed about what will be discussed. Example of violation: At the March 1, 2021 meeting of the Land Use Committee, revisions to the posted item were made at the very beginning of the meeting so that no member of the public knew how best to respond.
2. If an item is carried over from one meeting to the next in order to inform both the media and the public of the details to be discussed, there should be sufficient time to post the item before proceeding. Example: On March 1, 2021, the Land Use Committee voted to take no action on the QuadPlex Zoning item and to refer it to the Agenda Committee. At the following Land Use Committee meeting held on March 4, 2021 the QuadPlex item once more appeared on their agenda in its original form and included in the packet for that meeting was a 407 page report containing proposed revisions previously presented but not included in the item that appear on the agenda for that meeting. Not only had members of the public assumed the matter would no longer be before the Committee, but members of the Committee itself seemed unsure of its status before the Committee, precipitating a long and complicated staff and Committee member discussion.
3. If significant revisions to an item are made at a meeting, it is suggested that action be deferred to a future meeting in order to give notice and time for the public to respond. Example: Revisions were made at the February 23, 2021 Council meeting regarding establishing the end of single family zoning, but the Resolution of Intent to accomplish that goal is still not posted on the City's website so that people could be assured of exactly what the Council included in their approval. Further, it would be excellent for the Open Government Commission to establish a protocol that after receiving public comment on such a major issue that action be deferred to an upcoming meeting in order to allow a brief period for the council to reflect on what they had heard from the public.
4. Members of the public are allowed only one minute in which to make their remarks. Example: Almost every land use meeting held by the City. One minute is simply not enough time to make a meaningful comment, but while written comments are also taken,

too frequently, these one minute oral comments have to be made in response to sudden late revisions to the item at hand.

5. The status of those who work for, or who volunteer in the offices of any Councilmember or staff person should be stated and independently determined as to whether that person should be registered as a lobbyist regarding that particular issue. Example: the status of a person who is a policy analyst in a statewide organization that would be supportive of the local action at hand, who heavily participated in the drafting of our local ordinance, was only acting as a volunteer, was never addressed leaving many questions unresolved. The Commission must clarify the status of such individuals under our local ordinance
6. In making a referral of issues to the various Council policy committees, the status of the committee membership in each such referral must be considered so there is not a majority of the policy committee membership that has been involved in the previous discussion and preparation of the matter being referred to that particular committee. This is to ensure that an independent consideration of the issue is provided to the Council and also that if the committee member is not involved in the preparation of the item at the beginning of the referral, to ensure that person could not be counted toward the commission of violation of the Brown Act. Example: my first complaint regarding how this happened in regard to the issue of modifying implementation of the goal to end single family zoning.

The experience of the last few weeks regarding the issue of ending single family zoning has highlighted some fundamental issues regarding transparency and the opportunity to ensure public participation in governmental decisions. That experience must be addressed. It cannot be forgotten and swept under the rug as it involves not only the future vision of our City but also how we demonstrate what we call the values that define our City.

I reserve the right to amend this complaint in the future and I look forward to appearing before you. Thank you for the opportunity to make and discuss such complaints.