

January 25, 2022

Honorable Mayor Kate Colin and City Council members
City of San Rafael
1400 Fifth Ave. Room 203
San Rafael, CA 94901

RE: Use of DRB Subcommittee during Shelter-in-Place order

Honorable Mayor Kate Colin and City Council members:

In March, 2020, the Planning Department started using a DRB Subcommittee, prior to the City Manager's issuance of a Policy Statement on April 1, 2020. As Director of Emergency Services during the COVID pandemic, the City Manager issued a Policy Statement that the 5-member Design Review Board would no longer physically meet as an open public meeting and instead a Design Review Board Subcommittee, consisting of only two (2) board members will meet by conference call with staff and project architects only, *without requiring public notice or allowing public participation* and that this policy was consistent with Executive Orders issued by the Governor of California and would continue until the Marin County Shelter-In-Place Order ended, almost 7 months later, on October 27, 2020.

SRMC 7.12.020 describes the powers and duties of the Director of Emergency Services. SRMC 7.12.020(b)1. states that the director is empowered to "make and issue rules and regulations on matters reasonably related to the protection of life and property as affected by such emergency; provided, however, such rules and regulations *must be confirmed at the earliest practicable time by the city council (emphasis added).*" As Director of Emergency Services, the City Manager decided that reducing the DRB from 5 members to 2 members and eliminating public notice and public participation was reasonably related to the protection of life and property as affected by the COVID pandemic. ***However, this policy was never confirmed or ratified by the City Council, as required.***

Executive order N-29-20 cited in the Policy Statement authorized the City "to make public meetings accessible telephonically or otherwise electronically to all members of the public." It goes on to state that the requirements of both the Bagley-Keene Act and the Brown Act with regard to the *physical presence* of members or of the public as a condition of participation in or quorum for a public meeting are waived. The order says that by holding a meeting via teleconferencing and allowing members of the public to observe and address the meeting telephonically or otherwise electronically, shall satisfy any requirement that the body allows members of the public to attend the meeting and offer public comment.

It is clear that the intention of the Governor's order was not to *bar* public participation, as the City Manager did, but to allow the public to observe and participate in a public meeting by teleconferencing or other electronic method rather than "in-person" and only waives the physical presence or in-person requirements of the Bagley-Keene and Brown Acts. The Governor's order requires a swift resolution for reasonable accommodation requests and "resolving any doubt whatsoever in favor of accessibility" as well as *requiring notice be given* of the "means by which members of the public may observe the meeting and offer public comment." How did the City Manager's policy statement to reduce the size of the DRB to only 2 members and hold meetings without public notice or public participation comply with the Governor's executive order? Didn't the decision to eliminate public notice and public

participation for Design Review Board meetings violate due process in that it deprives individuals from presenting their objections to board action at a public meeting?

Why was the Design Review Board singled out as the only city board, committee or commission to bar public notice or public participation for the duration of the Shelter-In-Place order, which lasted almost 7 months? Other boards, committees and commissions began having ZOOM meetings as early as April 14th, when the Planning Commission went virtual. BPAC met on ZOOM beginning June 3, 2020. The City's Park and Recreation Committee and the Fire Commission both began using ZOOM on July 16, 2020. Even Zoning Administrator meetings were being conducted via conference call with public participation by telephone or ZOOM.

What caused the Planning Department to independently implement the DRB Subcommittee in March, 2020, and then join the City Manager to formalize their action in a Policy Statement that was *never approved by the City Council*.

Even after the City Council recommended DRAC include public participation at their meeting on September 8, 2020, planning staff continued to hold DRB Subcommittee meetings *without public notice or public participation* until November 4, 2020, when the first full Design Review Board meeting was held and the only agenda item was to solicit feedback from the board members on the proposed changes to reduce the DRB to 2 members, or DRAC, as a pilot program.

The following summarizes the consideration of changes to the DRB by the City Council:

The City Council did *NOT* adopt any changes to the 5-member Design Review Board, including the reduction of the board to only 2 members, or adopt any changes to *public notice or public participation* at any time before, during or after the Shelter-in-Place order.

At the City Council meeting on **January 21, 2020**, agenda item 6.a., Planning Staff presented an informational report and suggested the City Council “could consider potential changes to the structure and role of the DRB” and listed 3 options with a recommendation that Council “direct staff to return with an informational report on the potential changes.” No action was taken by the City Council to approve or adopt any changes to the Design Review Board.

In a subsequent City Council meeting on **September 8, 2020**, agenda item 5.a., planning staff states: “Since the March 16th, 2020 Shelter-in-Place ordered for Marin County went into effect, staff found the need to restructure the format of the DRB to a subcommittee format comprised of a licensed architect and a licensed landscape architect”. However, planning staff never received authorization from the City Council to reduce the DRB to a subcommittee of only 2 members and *failed to inform the City Council that planning staff had also eliminated public notice and public participation for DRB meetings*.

Planning staff recommended the City Council adopt changes to the DRB to create a 2-member Design Review Advisory Committee (DRAC) with proposed amendments to the SRMC which would eliminate public notice and public hearing requirements. Council members did not recommend approval, instead provided high-level policy direction that the DRAC include measures for *public participation* and continue the item to the September 21, 2020, meeting.

On **September 21, 2020**, the City Council was presented with staff's recommendation to formalize the DRB subcommittee or DRAC pilot program to include “the use of remote (Zoom) meetings similar to

the Zoning Administrator meetings format” and include public noticing and public participation. Staff recommended the Council adopt the DRAC pilot program by resolution, rather than amend the SRMC.

Based on the City Council receiving communication from the Design Review Board saying they had not been included in the discussion with Planning Staff to reduce the size of the Board, Council recommended that Planning staff engage with the Design Review Board to get their input as to the proposed DRAC program.

The first ZOOM meeting scheduled for the DRB was on November 4, 2020, and the only agenda item was to solicit feedback from the board members on the proposed changes to reduce the DRB to 2 members, or DRAC, as a pilot program.

Action required before consideration of DRAC:

*I support Responsible Growth in Marin’s suggestion that an evaluation report be prepared by the Planning Department to document the unauthorized use of the DRB Subcommittee during the Shelter-in-Place order, from March 16, 2020 thru October 27, 2020. This report should include reasons for not obtaining approval from the City Council, as required; information about the projects reviewed, including addresses, type of application, neighborhood; those in attendance; outcome, ie approval, denial, or continuance, etc. The report should be presented to the Planning Commission and the City Council at public hearings and the report should be made available to the public. **This issue should be fully vetted and resolved being proceeding with a formal recommendation of the DRAC.***

Sincerely,

Victoria DeWitt

cc: Planning Commission
Jim Schutz, City Manager
Alicia Giudice, Community Development Director