



WWW.SAVEOURSEALBEACH.COM

SAVE OUR SEAL BEACH

119 8th Street, Seal Beach, CA 90740
Phone: (562) 431-0950

May 21, 2008

I, Mary Lewis, have been duly authorized by the Save Our Seal Beach Committee to submit to the City Clerk, City of Seal Beach, the following Committee statement regarding our citizen's Referendum Against Ordinance Number 1569:

We, the petitioners, object comprehensively to and seek relief against the contents, philosophy, intents and effects of Ordinance 1569, in their entirety. Relevant to Ordinance 1569, this includes but is not limited to the entire Ordinance's General Provisions, the Base District and Overlay District Regulations, the Regulations Applying in Some or All Districts, Land Use and Zoning Decisions, and Terms and Definitions.

We, the petitioners, object to and seek relief against the Ordinance's draconian instigation of new and novel height limitations, Floor-to-Area-Ratios, daylight planes, landscaping, open space and green area requirements, increased parking and garage allocations, and effectual architectural review and design control of all new construction by the City Planning Commission.

We object comprehensively to and seek relief against the facts that regarding intrinsic and constitutionally guaranteed rights of ownership and disposition of private property, Ordinance 1569 repudiates the City General Plan, ratified by popular vote; it stealthily advances a small special interest's "zero-growth" economic and zoning agenda against the repeated expressed will and the common good of the general City electorate; it financially persecutes a discrete, unprotected minority of private property owners with unjustified and massively disproportionate regulatory takings; it discriminates against younger and/or larger families, multi-generational living arrangements and those families attempting in-home elder care accommodations, racial and ethnic minorities who culturally favor extended family or multi-generational households; and economically punishes all other City homeowners with downzoning provisions affecting neighborhoods Citywide without appropriate notification, without their advance knowledge or consent, and without substantive opportunity for their informed deliberation or democratic participation in such critical public policy decisions with far-reaching economic and demographic implications.

We object comprehensively and seek relief against the outrageous and unjustified extension of government power asserted in publicly stated claim by the City Council, the Planning Commission, and City Staff that they could make any change they wished in zoning codes based on inherent police powers of local legislatures over land use. This despite the fact that California and Seal Beach statutes governing land use show legislatures can make changes only when they can demonstrate evidence of code alteration necessary to preserve the health, safety, or general welfare of the community. Neither the City Council, the Planning Commission, nor City Staff cited any reasons for code changes based on health, safety, or general welfare within the new Ordinance 1569. Even when citizens requested that the City provide data and health studies when “mold” was briefly cited by downzoning advocates, and even when an economic impact analysis of the residential and commercial code changes being sought by Staff and promoted by the Planning Commissioners were repeatedly requested by citizens and representatives of the Committee for public review, the City refused to provide such.

We object that when any mention of reasonable “investment back” expectations by homeowners was made during the truncated public hearings held regarding the massive 600 page Ordinance 1569, those concerns were utterly disregarded, ignored in the same dismissive fashion by City Council and City functionaries that virtually all concerns by private property owners attempting to participate in the earlier, sham “study session” process were – by being pejoratively labeled and derided as “developers” motivated by only “greed” and “profit” without any legitimate policy issues to raise regarding the City’s agenda of regulatory takings or its procedural irregularities in that process.

We object that while those Seal Beach citizens and homeowners concerned over respect for property rights were routinely dismissed from the policy process and their recommendations generally ignored, the City Council and Planning Commission accepted specious arguments from a special interest minority of residents that wished to raise the alleged “blocking of sea breeze and sunlight” by any new construction to the level of nuisances – even though California courts have refused to allow air, light and view to be considered nuisances leading to extended use of police powers by local governments.

We object that the City Council and Planning Commission fecklessly and groundlessly claimed they were representing the majority of Seal Beach residents in passing Ordinance 1569, ignoring the only recent data on these issues: Citywide Referendum signature gathering of 3,600 voter signatures in 2006 against residential height restricting Ordinance 1553, and the election returns of Proposition 90 of 2006 that considered the definition of regulatory takings as it exactly applies to the situation of downzoning within zoning codes. The Statement of Votes for Proposition 90 shows it passed overwhelmingly in each of the five Council Districts of Seal Beach.

However, Mayor Antos has repeatedly refused to be guided by the sense of the full community by seriously considering these results, and has continued to falsely assert that in downzoning, he is acting in the will of the majority.

We object that Mayor Charles Antos has publicly admitted that reducing the residential home height limit from 35 feet to 25 feet would only affect a small number of properties. However, he is determined at any cost that a discriminated-upon minority should bear the burden of his stated objective to “preserve the quaint character” of the whole community, even if unsupportable in law and justice.

FURTHER: We the petitioners, object comprehensively to and seek relief against irregular and extraordinary City Council votes and manipulation of legislative procedures attendant to both the City Council’s passage and temporary rescission of Ordinance 1569, as such conduct affords every appearance of personal advancement, political pay-offs and an obvious illicit procedural ploy to preempt and thereby obviate the validity of this Referendum effort, as Mayor Antos has already directed City Staff to bring forward various odious elements of Ordinance 1569 piecemeal “as soon as possible.” Such conduct violates every norm of decent and fair democratic process; and such conduct fails to protect the good name and sense of community of the City of Seal Beach, and disgraces and scandalizes the obligations of stewardship entrusted to the City Council by the citizens.

As is well known, the Brown Act ([Government Code §§ 54950-54962](#)) governs meeting access for local public bodies. It states that meetings of public bodies must be "open and public," actions may not be secret, and action taken in violation of open meetings laws may be voided (§§ 54953(a), 54953(c), 54960.1(d)). Serial meetings or individual meetings amongst City Council on issues that should be discussed in open meetings are likewise prohibited.

This prohibition applies substantively to the initial passage of Ordinance 1569. The Committee believes that Seal Beach Mayor Charles Antos, City Councilman District 1, has clearly and repeatedly conspired to violate the Brown Act in establishing a chain quorum within the Seal Beach City Council. Recent passage of Ordinance 1569 would not have been possible to effect in the irregular manner of City Council actions without Mr. Antos manipulating the appointments and votes of two newly appointed City Council members Gary Miller and David Sloan – possibly with the illicit collusion of District 3 Councilman Gordon Shanks.

On June 26, 2006, following abuse of their Moratorium power and much public rancor, the Seal Beach City Council voted to approve a ban on 3 story homes in Seal Beach under Ordinance 1553. This set an immense public debate in motion that, after the

collection of over 3,600 voter signatures sent to the Orange County Registrar of Voters, set the Ordinance on track for a public Referendum. Faced with the public outcry, the Seal Beach City Council ultimately revoked Ordinance 1553 to ban third stories, and sent the issue to the Planning Commission for study with citizen input.

For more than the next 14 months, interested citizens of Seal Beach and the Planning Commission worked on a zoning amendment package that was reputed to contain a compromise of residential structure size and height. Although these “study sessions” directed by City Staff cavalierly dismissed virtually all concerns and compromise positions put forth by the Committee’s representatives, still, in the end, the citizens and Planning Commission of Seal Beach rejected Mr. Antos’ outright third story ban in the resulting recommendations and draft zoning amendment. Even in Citywide residential downzoning, larger lots in District 1 were left with the option to build a reduced-sized third floor.

Mr. Antos, desperate to enforce his ban on 3 story structures, then to all public presumption, acted to establish an illegal chain quorum, with the specific intent to conceal from the general public the citizen zoning negotiation outcomes, and override the Planning Commission’s recommendations, even though he is clearly aware of the public’s right to know about and participate in such matters – and of the public’s right to be notified in advance of actions being contemplated or taken by the City Council. To all appearances, he could only have effected the vote outcome on Ordinance 1569 by privately lobbying two new City Council members who were not publicly elected but are merely recent temporary Council appointees – Mr. David Sloan and Mr. Gary Miller.

On Monday February 11, 2008, the City Council picked David Sloan to fill a vacancy in one of the Council Districts. "He seemed to be well up on issues and well rounded," said Mayor Charles Antos, during a vote for appointment by the Council. "He's my number one choice." Yet banning 3 stories or overriding the Planning Commission’s hard-gained recommendations was not publicly discussed. This is evidence that Mr. Antos had private conversations with Mr. Sloan about the complex zoning issues. He demonstrated prior conviction that Mr. Sloan would vote for such a ban publicly rejected by the Planning Commission, and may well have offered his vote for Mr. Sloan’s appointment in exchange for Sloan’s support of Antos’ ban.

Later, on April 14, the new Council member, David Sloan, and yet another new Councilman appointee, Gary A. Miller, voted on the issue when they had not been involved or present in the long-term zoning debate or any public sessions. Miller had just been sworn in as a Council member the very night the vote was taken for the new Ordinance 1569, the 3 story ban was suddenly introduced against the Planning Commission’s recommendation, and Miller was participating in his first Council meeting.

These new Councilmen and Councilman Shanks voted on this complex 600 page Ordinance 1569 with Mr. Antos' sudden midnight revisions including the 3 story ban, without any visible surprise, comment or question, following Antos' lead.

The debate that had taken countless hours during the prior two years was settled contrary to public consensus with nary a word from these new City Councilmen, and without any prior public notification that an outright ban of 3 story structures was again to become "in play" in the zoning code Ordinance 1569. This is not just negligence or laziness, this is direct evidence of a Brown Act violation choreographed by Mr. Antos. He did it with the intent to create a secret concurrence through a chain quorum amongst the Council for his pet issue – the 3 story ban.

On Monday, April 21, in an extraordinary scheduled meeting only one week later, and still NO public notification of the change in code effecting the height limitations on residential properties rejected by the Planning Commission, the "new" City Council voted 4-1 to approve the zoning amendment with the added 3 story ban. Mr. Miller, Mr. Antos, Mr. Shanks and Mr. David W. Sloan voted in favor. Mr. Michael Levitt, voting alone against the measure declared that, "Doing this is wrong."

We, the petitioners, therefore comprehensively object and seek relief against all apparent abuse of the democratic process, violations in spirit and letter of the Brown Act, and all other failures of protection of the rights of responsible self-government by the City of Seal Beach on behalf of the citizens thereof in the enactment of Ordinance 1569 and all subsequent City Council actions pertaining thereto.

Sincerely,



Mary P. Lewis
President, Chairman of the Board
Save Our Seal Beach, Inc.



Eldon L. Alexander
Secretary, Member Board of Directors
Save Our Seal Beach, Inc.