

**SUNSHINE ORDINANCE
TASK FORCE**



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August 24, 2010

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco CA 94102

Referral of Sunshine Ordinance Complaint #10015, Ellen Tsang v. Planning Department

This referral stems from the Planning Department's failure to comply with an Order of Determination that the Sunshine Ordinance Task Force issued on May 25, 2010, wherein the Department was instructed to provide requested public records related to a property at 2642-2644 Hyde Street. The referral is made pursuant to Sunshine Ordinance Section 67.30(c).

Background

On April 14, 2010, Ellen Tsang filed a complaint with the Sunshine Ordinance Task Force alleging that the Planning Department failed to provide documents responsive to her March 11, 2010, Public Records Request to Jonas Ionin of the Planning Department.

Task Force Hearing and Order of Determination

The Task Force heard the matter on May 25, 2010. Ms. Tsang said she had asked for (1) a copy of architect Robert Mittelstadt's final stamped and signed set of revised drawings that was provided to Mr. Ionin on February 13, 2009; (2) a copy of Mr. Mittelstadt's two sheets of photos of the rear of the building that was provided to Mr. Ionin on February 13, 2009; (3) a copy of Mr. Mittelstadt's "legal description of Lot 17 that gives the size and purpose of the easement" that was provided to Mr. Ionin on June 20, 2008; (4) a copy of a sketch of her Plot Plan "with the dimensions you requested" that was provided by Mr. Mittelstadt to Mr. Ionin on June 20, 2008; and (5) a copy of a sketch of her Second Floor Plan with "dimensions of the balcony" that was provided by Mr. Mittelstadt to Mr. Ionin on June 20, 2008.

She said the existence of the documents was proved by emails between Mr. Ionin and Mr. Mittelstadt.

Mr. Ionin, who represented the department, said state law required that the property owner and the architect approve the release of the final signed and stamped revision drawings held

with the Department of Building Inspection. He said he also advised Ms. Tsang that the parcel map was available at the Assessor's Office and that all documents in his possession had been produced as requested.

Mr. Ionin also stated that the department did not respond specifically to the March 11, 2009, request because the information requested had been produced repeatedly on previous occasions.

In light of the foregoing, the Task Force found the Planning Department in violation of Section(s) 67.21, 67.25, 67.26 and 67.27 of the Sunshine Ordinance. The Department was directed to produce copies of the documents that Ms. Tsang requested within five business days of the issue date of the Order of Determination.

Hearing on the Issue of Compliance

A Task Force hearing on the status of the Planning Department's compliance with the Order of Determination was held on June 22, 2010. Ms. Tsang told the Task Force that the Department had informed her that the final stamped and signed set of revised drawings was in the possession of the Department of Building Inspection. She also said Mr. Ionin has informed her that he would be providing her with a copy of the photos and that he had already provided her with a copy of the "legal description" document. However, she said, she had yet to receive copies of the sketches.

Brian Smith, who represented the Planning Department, said Ms. Tsang asked for five documents on May 24 and was told three days later that the first could be reviewed at the Department of Building Inspection, the second could be reviewed at the Planning Department, and copies of the third, fourth and fifth documents were also available at his office. He emphasized that the department was trying to help the complainant as much as possible.

Task Force members then voted to send the matter to the Ethics Commission for failure to comply with the Order of Determination. This request and referral are made under Section 67.30(c) of the Sunshine Ordinance whereby the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance whenever it concludes that any person has violated any provision of this Ordinance.

Supporting Materials

The enclosed CD contains material in reference to this referral including (1) the May 25, 2010, Task Force Order of Determination; (2) documents regarding this complaint that have been submitted to the Sunshine Ordinance Task Force; and (3) the minutes from the Task Force meetings on May 25, 2010, and June 22, 2010.

If you need any further information, including audio recordings of any of the meetings referenced above, please contact me or the Task Force Administrator at (415) 554-7724.

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Richard A. Knee, Chair
Sunshine Ordinance Task Force



David Snyder, Member, Seat #1*
Sunshine Ordinance Task Force

cc: Jerry Threet, Deputy City Attorney
Jana Clark, Deputy City Attorney
Ellen Tsang, Complainant
Jonas Ionin, Respondent
Brian Smith, Respondent

*Seat #1 on the Task Force is designated for an attorney nominated by the Society of Professional Journalists, Northern California Chapter.