

Date: January 8, 2008

Item No. 4

File No. 07071

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Complaint by: Dee Modglin vs Mayor's Office of Housing**
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Completed by: Frank Darby

Date: January 2, 2008

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

SUNSHINE ORDINANCE
TASK FORCE



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

October 23, 2007

October 26, 2007

Dee Modglin
Dmodglin@earthlink.net

Douglas Shoemaker
Mayor's Office of Housing
1 South Van Ness Ave, Fifth Floor
San Francisco, CA 94103

Re: Complaint #07071 by Dee Modglin against the Mayor's Office of Housing (MOH) for alleged incomplete and inaccurate release of information.

Based on the information provided to the Task Force from the Complainant Dee Modglin, Supporters Laura Carroll and Robert McKee, Respondent Douglas Shoemaker, and hearing public comment, the following Order of Determination is adopted:

The Sunshine Ordinance Task Force finds no violation.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on October 23, 2007 by the following vote: (Goldman / Pilpel)
Ayes: Craven, Knee, Cauthen, Pilpel, Goldman, Williams
Noes: Comstock, Wolfe, Chan
Excused: Chu

A handwritten signature in black ink, appearing to read "Doug Comstock".

Doug Comstock, Chair
Sunshine Ordinance Task Force

c: Ernie Llorente, Deputy City Attorney



Dee Modglin
<dmodglin@earthlink.net>

12/28/2007 05:32 PM

Please respond to
Dee Modglin
<dmodglin@earthlink.net>

To SOTF <sotf@sfgov.org>

cc

bcc

Subject Re: Appeal Hearing Request for Jan 8, 2008 for #07071

Hi Frank:

I have prepared an outline that I have attached that explains some of the key points of untimely responses I presented previously that I would like them to reconsider as truly being SO requests for Immediate Release that were either not complied with at all by MOH, or responded to in an incomplete and untimely manner.

Please let me know if this is not the type of information the Appeals Board is needing and if I need to collect other data?

In summary, below are the following outstanding total violations pertaining to my original complaint #07071 and also detailed in the attached document:

- 3 - RECORDS STILL NOT RECEIVED (SORFI) & VIOLATION OF 67.25 et al.
- 12 - UNTIMELY & INCOMPLETE RELEASE OF RECORDS - Violation of 67.25 et al.

As you advised, I will be filing a separate complaint for additional MOHhe SO violations not covered in my previous complaint.

Thank You.

Dee Modglin

-----Original Message-----

>From: SOTF <sotf@sfgov.org>

>Sent: Nov 29, 2007 4:55 PM

>To: Dee Modglin <dmodglin@earthlink.net>

**#07071 UNTIMELY AND/OR NON-COMPLIANCE OF SUNSHINE ORDINANCE
REQUESTS BY MODGLIN TO MAYOR'S OFFICE OF HOUSING**

**Date SUNSHINE ORDINANCE REQUESTS FOR IMMEDIATE
(SORFIR) RELEASE SUMMARY FORM 2006-2007**

3 - RECORDS STILL NOT RECEIVED (SORFI) & VIOLATION OF 67.25 et al.

3/7/06 & 3/13/06 1. Modglin request for her own records and identify other complexes/seeking release from the Condo Conversion Resale Restriction. Was told there is no file on myself and was not given the information on other properties seeking release from the program. Laura Carroll was provided with documents on me as well as provided property addresses where individuals sought releases from the Low & Moderate Income (LMI) Condo Conversion Program (CCP). This info was in MOH's possession but not released to me.

Violation of Sections 67.25 & 67.29-7

3/24/06 – 9/26/07 2. I made numerous verbal and written requests for SORFIR in 2006 and 2007 for SORFIR; during a meeting on 5/17/07 with Matt Franklin and others MOH employees, email for SORFIR to MOH on 9/26/07, all in an effort to obtain any and all documents that give MOH the authority to change the policies and procedures of the Condo Conversion Program without public discourse and notice? To date, my SORFIR's remain unanswered by Matt Franklin, Doug Shoemaker and other MOH staff. Doug Shoemaker declared that I should seek private legal counsel to get the answer to this SORFI request and refused to release the requested documentation nor lend any further assistance to obtain this information. This is critical since the SF Subdivision Code that applies to long time owners does not identify MOH as the authority to designate resale value nor administer and enforce violations of the codes, policies and procedures which according to Subdivision Code Section 1341 & 1385 for units converted prior to 1988 is administered by the San Francisco Department of City Planning.

Violation of Sections 67.25 & 67.29-1

7/18/06 3. On July 18, 2006, Mark Won also questioned MOH legal authority to make capital improvement changes.

9/26/07 S.O. For Immediate Release submitted back in 2006 and again in 9/26/2007 requesting for MOH to answer what written legal authority do they have to continue to change the capital improvement policy and procedures without public discourse? No response was provided claiming that this was not an inquiry within the Sunshine Ordinance ordinance. In 2007 when the SO Request for Immediate

Release for this same info was requested again, Doug Shoemaker informed me on 9/26/07 that I will have to seek private legal counsel to get that answer and that he is not obligated to answer this question.

Violation of Sections 67.25 & 67.29-1

12 - UNTIMELY & INCOMPLETE RELEASE OF RECORDS - Violation of 67.25 et al.

3/23/06

1. In response to my 3/7/06 written request and SO request to Jeannie Lu, as well as the numerous telephone and email communications with Doug Shoemaker on 3/13/06 and thereafter was assured that I could have access to my records and Doug Shoemaker set up an appointment for me to come to his office, no such records were produced. On 3/23/06 Doug Shoemaker emailed and stated that MOH does not have a record pertaining to myself and my unit and stated that a file folder is created when a *"homeowner request the calculation of their unit's resale price or send in their receipts as capital improvements for us to review and evaluate the work."*

Doug Shoemaker's info was contradictory to Ruby Harris's verbal and written information conveyed regarding what documents are placed in a file. Ruby Harris verbally and in subsequent email dated 9/11/07 states *"Electronic records for processing Condo Conversion resales and general owner correspondence are printed and placed in the corresponding paper file, therefore you are in receipt of those records."* I never received my files and records and first learned in 2007 from Laura Carroll that she in fact did receive numerous documents pertaining to myself that were considered correspondence documents.

Violation of Section 67.25

5/18/06

2. In response to my 3/13/06 S.O. request to obtain a master log of units in the Condo Conversion program and many other subsequent S.O. Requests for Immediate Release of updated MOH's master log of all units in the LMI CCP, I was provided with undated master logs and took MOH 1 1/2 years to provide me with the correct master log. Of 644 units yet on 11/7/07 MOH emailed me what they said was their latest master log of 635 units.

More than half of the information in the log is inaccurate and even though I alerted MOH in 2006 of the inaccurate information they have continued to maintain that they have no obligation to update the this master log which identifies what units are active and they claim is

being monitored and administered by MOH to remain in compliance with the SF Subdivision Codes 1341 & 1385.

MOH released confusing and inconsistent number of active units in the LMI CCP program:

May 18th 2006 MOH emailed log of 632 units.

October 20th, 2006 MOH emailed and identified 644 units.

November 7th, 2007 MOH emailed and identified 635 units.

- 6/23/06 3. Ruby Harris letter on Mayor's of Office of Housing stationary to Doug Shoemaker, titled "Rental of Condo Conversion Units" lists an entire page of what Ruby herself addresses as "confusion" and conflicting information in the Subdivision Codes, SF Bond regulations, MOH's web site and conflicting information that MOH has disseminated on "whether owner-occupied units can be subsequently rented."
- 10/4/06 5. Repeated S.O. Request For Immediate Release for examination of any and all communication, correspondence, notes and records pertaining to the condo conversion program were again requested 10/4/06 and not responded to until October 11th, 2006.
- 10/4/06 6. Repeated S.O. Request For Immediate Release for examination of any and all communication, correspondence, notes and records pertaining to the condo conversion program were again requested 10/4/06 and not responded to until October 11th, 2006.
- 10/4/06 7. Repeated S.O. Request For Immediate Release for examination of any and all communication, correspondence, notes and records pertaining to the condo conversion program were again requested 10/4/06 and not responded to until October 11th, 2006.
- 12/11/06 8. S.O. Request For Immediate Release to view correspondence & flyers pertaining to the CCP was requested on 12/11/06 and I provided MOH a copy of MOH's 20-50 year term limit flyer that was disseminated by the City in the 80's onward. Ruby Harris responds 12/11/06 claiming that she has not seen such type of correspondence and will look on the server. Documents that were released prior to that time revealed that in fact MOH had these documents all along in their records but failed to disclose this information. The 20-50 year flyer was located in MOH files in three locations even though MOH denied they had the flyer or any reference to the 20-50 year term limit language. Even after MOH released all the files and claimed that they had reviewed and redacted all documents, thus leading to believe they read the files, did not disclose that they located the 20-50 year term limit flyer and same language that was located in three separate documents and email files. Two years later, and thousands of hours of time and

over \$7,000 of document fees finally produced proof that these documents also existed within MOH's records.

MOH'S action constitute a violation of EC 78.21(c) which states that "A Custodian of public record shall assist a requestor in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian..." In addition, the lengthy delays caused financial harm and thousands of hours of wasted time and government staff hours of what should have been searched for right away since this document and request for such information was provided to MOH in 2006 and not produced for almost two years.

9. Also made repeated requests for copies of emails MOH employees, and also addressed a repeated S.O. Request For Immediate Release specifically to Matt Franklin. **To date, Matt Franklin has not responded to my S.O. For Immediate Release of his email files nor has MOH accounted for all employees and email files that should have been made available to date.**

Only after I had filed a SOTF complaint did Ruby Harris cooperate and agree to provide some employee emails that took another 2 months to receive. She had previously maintained that unless I specifically asked for and use the word emails that I am not entitled to receive emails. She declined to accept my wording of "any and all documents" as including emails.

6/27/07

10. S.O. Request for Immediate Release to provide clarity to ambiguous and confusing language in the codes and misinformation that the City disseminated regarding the LMI Condo Conversion Program. UNTIMELY response. Ruby Harris did not respond until 7/5/07 and denied that there were ambiguities and misinformation disseminated by the City and MOH specifically, claiming "*MOH has no evidence that the City has disseminated misinformation regarding this program.*"

MOH own internal records, obtained through repeated SO requests and finally released 8/30/07, in a box marked "Misc. Box of Historical Records & Personal Files" prove to the contrary. **Ruby Harris in fact wrote a letter to Doug Shoemaker dated June 23, 2006 where she cites many conflicting policies, procedures and letters disseminated by the City and MOH.**

11. Myrna Melgar's response, dated 7/5/07 to my SORFIR request of 6/27/07 claims that the City's "ability to release a below market rate unit from the resale restrictions under Planning Code Section 1341 and 1385 is only on an occasion where a unit was not able to sell and the City was unable to find a qualified buyer within the dictated timeframe (120 days).

Just one of numerous examples of their own files reflect that Myrna Melgar's response is not accurate. Specifically, Unit 2610 Lake Street #1 was resold 3 times before MOH was notified by the seller in 2006 claiming they were unaware that the unit was in the LMI CCP and restricted to be sold at moderate income prices. This in fact was the third owner of this unit who had purchased it at market value and not once did the City/MOH contact or monitor this property to notify the owners that this unit was to be sold to moderate income qualified individuals at BMR rates. On 9/1/06, MOH recorded a Release of Special Restriction and the unit was cleared to be resold at market value and did not have to meet the criteria as Ms. Melgar claimed on 7/5/07.

9/22/07

12. #07071 Modglin SORFIR complaint.

MOH, Ruby Harris claimed that my requests and general language of any and all documents requested in my S.O. did not include emails unless I specifically state the word emails and also claimed in previous communication back in 2006 and in writing in 2007 that emails are copied and placed in MOH hard copy files. Yet, according to MOH, no file existed on my unit and other key documents were withheld for over 2 years that had been not in one but in three various locations within MOH records.

Violation of EC. 67.21(c) and was untimely and incomplete

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Dee Modglin
<dmodglin@earthlink.net>
11/16/2007 03:22 PM

To SOTF <soft@sfgov.org>
cc
bcc
Subject Re: 11/14/07 Sunshine Ordinance Request For Immediate Release- Repeated

Hi Frank

Yes, please schedule me for the appeal and would you be so kind to give me the points that you will be presenting to them from my past emails to you? Do I create another report of what I am appealing?

Also, I'd like to purchase a copy of the last SOTF hearing where Laura Carroll and I spoke (11/13/07).

The last tape that Bob picked up from you accidentally got chewed up in his tape deck in his car. If he has not obtained a second copy yet, I'd like to obtain another one of my hearing back on October 23rd, 2007 as well.

Please let us know when these tapes are ready to be picked up.

Thanks.

Dee Modglin

On Nov 14, 2007, at 10:44 AM, SOTF wrote:

Hi Dee,

You can request that your complaint be reconsidered by the Compliance and Amendments Committee. The hearing would be scheduled for December 12, 2007. Do you want a hearing to have your complaint reconsidered?

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854

Complete a SOTF Customer Satisfaction Survey by clicking the link below.
http://www.sfgov.org/site/sunshine_form.asp?id=34307

Dee Modglin
<dmodglin@earthlink.net>

To



Dee Modglin
 <dmodglin@earthlink.net>
 11/14/2007 10:07 AM

To SOTF <sotf@sfgov.org>
 cc Laura Carroll <lcarroll88@msn.com>
 bcc
 Subject Fwd: 11/14/07 Sunshine Ordinance Request For Immediate Release- Repeated

History: This message has been replied to.

Hi Frank:

Since there continue to be violations, is there a way to combine my complaint with Laura's hearing or should I submit a separate request to you? I would like to obtain permission to have the full 5 minutes to address my issues as it is impossible to give it proper attention with the voluminous violations in just 3 minutes of public speaking time.

Last night Doug Shoemaker contradicted his statements made to the SOTF on 10/23/07 where he claimed that there were no files that only contained one piece citing attorney client privileges. He admitted last night in fact that there were such files. What steps can I take to have the SOTF address this misrepresentation to them and that MOH is found in violation of the SO for failing to disclose such information?

Is there a way to get more time allowed due to the complexity of our situation and as the SOTF to combine our complaints and violations in to one? Or should I file a separate complaint again?

I welcome your suggestions on best to proceed.

Dee Modglin
 Chair of the Goldmine Hill Homeowners Association
 Moderate Income Housing Review Committee (MIHRC)
 (415)826-3598

Begin forwarded message:

From: Dee Modglin <dmodglin@earthlink.net>
Date: November 14, 2007 10:00:05 AM PST
To: Douglas Shoemaker <douglas.shoemaker@sfgov.org>
Cc: Ruby Harris <ruby.harris@sfgov.org>
Subject: 11/14/07 Sunshine Ordinance Request For Immediate Release- Repeated

Hi

Please advise if I can come by your office tomorrow to view the files you have thus far collected under my previous SO requests. I would also like to have available to me upon my request files that are listed as released or inactive that were not copied by our office.

1. Also, whenever you add on more employees to the ever changing list of employees that you first reported to me on Sept. 11th, 2007, it is confusing to only get one name here and there. Please put your updates and changes on to your master list and indicate the date you added that employee to the list and whether that employee is still with MOH or not. Each time you update the list, please add the date of last revision to your master list of MOH employees. That way, I am clear on who all in it's entirety is on this list and it is less confusing to all of us.

2. I submit to you that the master MOH employee list you have provided to date is not complete and was not presented to me in a timely fashion as is required under my SO to your office. Once again, please fully identify all these former and present employees with MOH in accordance with my SO request made back in Sept and again early October 2007. Ruby's first response of a partial list is dated 10/9/07. I consider this an untimely SO release of records.

3. Please confirm that **Kevin David** also interacted with CCP owners and therefore should be added to the list. What about **Amy Tharpe**? Is she or was she a MOH employee? She is listed on some communications that Ruby Harris had with Amy Tharp and Maggie Davis.

4. It has been over one month now and no further email documents have been made available. I consider this an untimely SO release of records.

It is my understanding from what you told the SOTF that email records should date back from 1997 to present. I've made this request in my SO to your office for release of this information back on September 11, 2007 and surely there are more emails than the few dozen that you have thus far found that should have been released by now to me? **I consider this an untimely SO release of records.**

5. Please confirm that MOH is now complying with proper record retention of emails and no longer destroying emails when the MOH employees stop working for your department. All those emails and records of ACTIVE units must be maintained for as long as the unit is active and once the unit is released for 3 more years thereafter. You and Ruby had stated that you destroy emails when the employee leaves. **This is in violation of SF record retention policies and procedures and would like you to address what action has been taken, if any to correct these violations?**

6. It is my understanding under the SO that I and those in the program have a right to be informed of and view the SF Subdivision Codes that give MOH the authority to make changes to policies. I submit to you that these policy changes have had severe negatively impacts on the value of our property and the continual changes and conflicting information disseminated by your office have further caused confusion as to what rules and regulations apply. The question remains, what codes apply? Is it the codes that were cited and recorded on our parcel map in 1981 or some other codes and policies in effect at a later date but not recorded against our property? There is nothing I found to date that give MOH the authority to apply amended codes and policies and procedures from those in place since 1981 for GMH when the tentative map was approved. Your office is continuing to fail to site what authority MOH has to apply different rules, regulations and policies than those that were recorded in 1981 and you instead direct us to seek legal counsel. I think is in violation of the SO and is a bullying tactic to cause further financial harm to those in the LMI program and you are not serving your function of administering the program.
I consider this an untimely SO release of records.

Dee Modglin
Chair of the Goldmine Hill Homeowners Association
Moderate Income Housing Review Committee (MIHRC)
(415)826-3598

Begin forwarded message:

From: Dee Modglin <dmodglin@earthlink.net>
Date: November 13, 2007 1:55:26 PM PST
To: Dee Modglin <dmodglin@earthlink.net>
Subject: Fw: email files not yet received from DTIS
Reply-To: Dee Modglin <dmodglin@earthlink.net>

-----Forwarded Message-----

From: Dee Modglin <dmodglin@earthlink.net>
Sent: Nov 13, 2007 1:55 PM
To: Douglas Shoemaker <douglas.shoemaker@sfgov.org>
Cc: Ruby Harris <ruby.harris@SFGOV.ORG>
Subject: Fw: email files not yet received from DTIS

Hi Doug & Ruby:

I received this email and understood that you were not ready for me to come by and review the files. I had asked to review email and other files.

I would like to reschedule for this Thursday morning at 9 am then.

Dee Modglin

-----Forwarded Message-----

From: Douglas Shoemaker <douglas.shoemaker@sfgov.org>
Sent: Nov 9, 2007 2:38 PM
To: dmodglin@earthlink.net
Subject: email files not yet received from DTIS

Dee,

I wanted to let you know that the email files of past employees have not been received and will not be ready for review on Tuesday. I will notify you when we receive the files.

On that note, we added Marcia Rosen and Lori Bamberger to the email data request. Lori is my predecessor as Deputy Director at MOH. Unfortunately they no longer have her email files.

have a good weekend

Doug Shoemaker
Mayor's Office of Housing
1 South Van Ness, Fifth Floor
San Francisco, CA 94103
415-701-5509



Dee Modglin
<dmodglin@earthlink.net>
11/28/2007 11:07 AM

To SOTF <sotf@sfgov.org>
cc
bcc
Subject #07071 Clarification on untimely responses needed

Hi Frank:

I am just sending a reminder to let you know that I am interested in appearing before the Task Force on the appeal process and also have additional complaints against MOH's failure to comply with more recent SO For Immediate Release of Records requests (11/14/07 & 11/16/07). MOH is not responding to my request to give me a total dollar amount to buy the remaining records which have already been copied and I estimate will cost in excess of \$1500+. Please advise if Section 67.25 (a) governs such a request and that non compliance/non response to my requests is grounds for filing a complaint with SOTF?

As always, appreciate your guidance on how to properly file my additional complaints and whether it requires a separate complaint # or can I consolidate it in to the one you are scheduling me for in December?

Dee Modglin
Chair of the Goldmine Hill Homeowners Association
Moderate Income Housing Review Committee (MIHRC)
(415)826-3598

On Nov 27, 2007, at 12:32 PM, SOTF wrote:

Hello Dee,

You will need to provide documentation to support your request for reconsideration of the SOTF's Order of Determination; however, the hearing will be before the full Task Force and not the Committee. The Task Force will reschedule there December 25, meeting. I'll let you know the new date.

Frank Darby, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place
City Hall, Room 244
San Francisco, CA 94102-4689
SOTF@SFGov.org
OFC: (415) 554-7724
FAX: (415) 554-7854