

**SUNSHINE ORDINANCE
TASK FORCE**



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**ORDER OF DETERMINATION
May 1, 2018**

DATE ISSUED
April 4, 2018

CASE TITLE – John Votruba V Director Tom Hui, Department of Building Inspection
(File No. 18006)

FACTS OF THE CASE

The following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

Complaint filed by John Votruba against Director Tom Hui, Department Building of Inspection, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner.

HEARING ON THE COMPLAINT

On March 20, 2018, the Compliance and Amendments (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

John Votruba (Petitioner) provided a summary of his complaint and requested that the Committee find violations. Mr. Votruba stated that the building plans were not available to all parties and that the Planning Department was not able to provide the requested plan. Mr. Votruba stated that the Department of Building Inspection (DBI) has a policy of allowing access to view plans but will not provide copies. William Strawn, DBI (Respondent), provided a summary of the department's position. Mr. Strawn stated that building plans are considered to be copyrighted documents and DBI cannot provide copies to members of the public without the permission of the architect and project sponsor. Mr. Strawn stated that the building plans are available for viewing in their office. Mr. Strawn referenced California Health and Safety Code, Section 19851, which states the following:

- (a) The official copy of the plans maintained by the building department of the city or county provided for under Section 19850 shall be open for inspection only on the premises of the building department as a public record. The copy

may not be duplicated in whole or in part except (1) with the written permission, which permission shall not be unreasonably withheld as specified in subdivision (f), of the certified, licensed or registered professional or his or her successor, if any, who signed the original documents and the written permission of the original or current owner of the building, or, if the building is part of a common interest development, with the written permission of the board of directors or governing body of the association established to manage the common interest development, or (2) by order of a proper court or upon the request of any state agency.

- (b) Any building department of a city or county, which is requested to duplicate the official copy of the plans maintained by the building department, shall request written permission to do so from the certified, licensed, or registered professional, or his or her successor, if any, who signed the original documents and from (1) the original or current owner of the building or (2), if the building is part of a common interest development, from the board of directors or other governing body of the association established to manage the common interest development.

The Committee suggested that the Petitioner request the building plans from the Planning Department again as there was a time period in which the Planning Department had difficulty finding their own records online. The Committee provided suggestions to Mr. Votruba in regards to presenting information to the Historic Preservation Commission without copies of the building plans.

On April 4, 2018, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

John Votruba (Petitioner) provided a summary of the complaint and requested the SOTF to find violation. Mr. Votruba stated that a copy of the plans is needed to be present to the Historic Preservation Commission and other bodies as evidence. There were no speakers on behalf of the Petitioner. William Strawn, Department of Building Inspection (Respondent), provided a summary of the department's position. Mr. Strawn stated that pursuant to California Health and Safety Code, Section 19851, building departments of the city or county shall allow inspections of official plans but may not duplicate plans without the written permission from both the project sponsor and the architect due to copyright infringement issues. Mr. Strawn stated that the Petitioner has not made a request to get permission to release copies of the plans. There were no speakers on behalf of the Respondent. A question and answer period occurred. The Petitioner and Respondent were provided an opportunity for rebuttals.

Deputy City Attorney (DCA) Colla advised the SOTF that the state code regarding the restriction on copying plans in the possession of the Department of Building Inspection takes precedence over the Sunshine Ordinance's requirement to make copies of public records available. DCA Colla suggested

that a complaint with the Fire Department regarding code violations may resolve the issue as the Fire Department may be able to request the record for review.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented the SOTF found that the Department of Building Inspections DID NOT violate Administrative Code (Sunshine Ordinance), Section 67.21.

ORDER OF DETERMINATION

Member Cannata, seconded by Member Hinze, moved to find that the Department of Building Inspection **DID NOT** violate Administrative Code (Sunshine Ordinance), Section 67.21, by failing to respond to a public records request in a timely and/or complete manner.

The motion PASSED by the following vote:

Ayes: 7 – Eldon, Tesfai, Maass, Cannata, Hyland, Fischer, Hinze

Noes: 0 – None

Absent: 3 – Chopra, J. Wolf, B. Wolfe



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. John Voltruba (Petitioner/Complainant)
Director Tom Hui, Department of Building Inspection (Respondent)
William Strawn, Department of Building Inspection (Respondent)