



**ACCESS APPEALS COMMISSION  
MINUTES  
Regular Meeting Wednesday, September 28, 2011**

**1. CALL TO ORDER AND ROLL CALL**

The meeting was called to order by President Ellsworth at 1:10 P.M.

**COMMISSION MEMBERS PRESENT:**

Mr. William Ellsworth, President  
Mr. Ronald Vernali, Vice President  
Mr. Walter Park  
Ms. Alyce G. Brown  
Mr. Arnie Lerner

**CITY REPRESENTATIVES:**

Mr. Tom Fessler, Secretary  
Ms. Evelyn Karcs, Recording Secretary  
Ms. Elaine Warren, Deputy City Attorney

**2. REVIEW AND APPROVAL OF MINUTES:**

The minutes for the August 10, 2011 meeting were approved unanimously.

**3. REVIEW OF COMMUNICATIONS ITEMS:**

Secretary Fessler had two communication items. The Secretary spoke with Carla Johnson of the Mayors' Office on Disability regarding obtaining their contact list in order to increase the Commissions' public outreach, this request should be forthcoming. The status of the previous appeal 439 Cortland Avenue was addressed. A permit application has been approved by the Bureau of Streets and Mapping for an entry complying with Administrative Bulletin 012 alleviating the need to continue the appeal.

#### **4. CONSENT CALENDER APPEALS**

##### **APPEAL #11-09**

##### **1390 MARKET STREET**

After a request by Commissioner Park this appeal was moved to the top of the agenda for this meeting. The appeal was moved off the consent calendar by Commissioner Brown. Bill Mahar representing 1390 Market Street agreed to have the appeal heard at this time.

Commissioner Ellsworth questioned whether the van space at the loading dock was used exclusively for van parking. Mr. Mahar stated the parking stall is a combination use with dumpster's occasionally being placed within the stall. Commissioner Brown questioned if all the conditions of the pervious March 2007 decision were adhered to. Mr. Mahar said yes they were. Commissioner Lerner wanted to know if there was some way to prevent dumpsters from entering the parking stall. Mr. Mahar suggested the parking stall could be chained of to prevent dumpster encroachment.

Commissioner Lerner made a motion to approve the appeal with the conditions in appeal # 07-05 with the added condition that some sort of separation is provided to prevent dumpsters being left in the parking space. The motion passed unanimously.

Commissioner Brown realized the motion did not have a time limitation. Elaine Warren suggested the commissioners rescind the prior motion and put forward a new one. Commissioner Brown made a motion to rescind the prior motion and pass a new motion with the following conditions. A renewal of conditions in the previous decision #07-05 with two added conditions, creation of a separation between dumpsters and the parking space and the decision will be effective for a three year period. The motion passed unanimously.

##### **APPEAL #11-08**

##### **160 SANSOME ST, 388 MARKETST, 595 MARKET ST**

The appeal was moved off the consent calendar by Commissioner Park. Jonathan Rodriguez representing Schindler Elevator agreed to have the appeal heard at this time.

Commissioner Park expressed his concerns about the procedures which were fallowed in 2008. He stated the 475 Sansome case was the first time the commission placed serious accessibility requirements on a destination based elevator control system. He was under the impression that during this time all new systems would be brought before the commission, enabling achievable improvements to the systems as conditions of approval. He went on to say, the approval of these systems should not have been done administratively by the Building Department staff. As such they cannot be presented as consent calendar items because they had not been before the commission in the past, therefore should be viewed as new appeals.

Commission Park questioned the three items listed in the brief which do not meet the requirements of Administrative Bulletin 090. First was the lack of white on black key pads, he stated this was not a great concern but questioned if all future Schindler key pads would have white on black key pads. Jonathan Rodriguez responded yes all newly permitted and installed Schindler key pads will have the black on white feature.

The second issue involved the color contrast of the LED screen. Commissioner Park questioned, why not replace the LED screen with one complying with AB 090. Mr. Rodriguez stated the key pad systems installed at these locations are not designed to swap out components in a plug in fashion. Commissioner Lerner questioned the cost of replacing the system. Mr. Rodriguez stated the entire key pad system would need to be replaced at a cost of a high six figure sum. He reminded the commission that the Department of Building Inspection had approved the installation of these systems. Commissioner Park expressed his displeasure with the approval without appearing before the commission. Mr. Rodriguez responded that he understood the commissioners' displeasure with the process of approval, but reminded everyone that these systems are more accessible than traditional elevator controls and to change them would be costly and stifle innovation.

The third issue of audio voice announcement of floors served by the elevator bank was discussed. Commissioner Park questioned why this feature could not be added to these systems. Mr. Rodriguez responded that voice commands are part of the systems hardware and changing it would require the entire control system replacement. He pointed out that only one building, 525 Market St, has multiple elevator banks requiring the floors served requirement. This building has full time security directing persons to the appropriate elevator bank and tactile signs at the elevator lobbies.

Commissioner Brown inquired if these key pad systems are no longer manufactured, what would happen if they needed to be repaired or replaced? Would you replace them with a new compliant system? The Schindler representatives stated they have replacement parts and systems for these existing systems but they are not manufacturing new ones. They are unable to upgrade these systems with features complying with AB 090 that could only be done by installing the next generation of control systems.

Commissioner Ellsworth made a motion to approve the appeal as presented for a three year period of time. The motion was approved with a 4-1 vote with Commissioner Park voting no.

## **NEW APPEAL #11-07 (ORDER OF ABATEMENT)**

## **3294 MISSION STREET**

The commission heard an appeal of an Order of Abatement issued by the Department of Building Inspection, for the lack of compliance with Notice of Violation # 200929343.

Commissioner Ellsworth started by asking are you proposing equivalent facilitation for disabled access to the commercial spaces? What are you after? Karen Stromeyer, council for Tiffany Gardens Homeowners Association, stated the appeal was to delay enforcement of the notice of violation issued by the Department of Building Inspection. There is a civil lawsuit between parties associated with this mixed unit building involving the responsibility of providing an accessible path of travel. She requested the commission table the order of abatement in order for parties involved have more time to come to an agreement or court ruling. Commissioner Ellsworth stated he did not understand what the commission could do for the appellant. The path of travel has been restricted for years in violation of federal law.

Commissioner Brown stated she had visited the site. She expressed her concern that the commission was being drawn into civil litigation. She stated lack of an accessible path of travel was the issue before the commission not the civil litigation. And items 4&5 of the Notice of Violation are not addressed by the appellants'.

Commissioner Park requested clarification of the conditions on site. It was determined the accessible path of travel was provided by the use of an elevator serving both the commercial and residential uses within the building. The use of the elevators is presently restricted by an electronic key placed on the elevator controls by the Tiffany Gardens Homeowners Association. The wooden deck structure built on the common area deck does not have an accessible path of travel.

City Attorney Elaine Warren stated the issue before the commission was to uphold or disprove the order of violation issued by the Department of Building Inspection. The commission could determine the order of abatement was issued in error, needed clarification, an error in the method to resolve the violations or uphold the order. The commission does not have enforcement power it can only determine if the actions taken by the building department should be upheld.

Commissioner Lerner questioned how long the commission could continue this matter. Ms. Warren stated the matter could be continued if the commission felt it had insufficient information to rule on this matter, request more information from the appellants or perform a site visit. Ms. Stromeyer thought the issues could be resolved through civil litigation within 3-4 months.

Rami Shamieh an attorney representing the restaurant tenant, Nabeel Youssef, described the history of the tenant space in question and the dispute between Mr. Youssef and the home owners association. He reminded the commission that the restaurant was built according to building permits approved by both the planning and building departments. Mr. Youssef testified his business has suffered because of lack of an accessible path of travel to bathrooms, losing many disabled and elderly clients. He pointed out no action has been taken by the homeowners association to address the violations except delay with civil lawsuits. He requested the commission deny the request for a continuance, the abatement is overdue.

Commissioner Park made a motion to deny the appeal to the order of abatement. The denial of the appeal was passed unanimously.

**5. DISCUSSION AND POSSIBLE ACTION ON ADMINISTRATIVE MATTER**

**6. COMMISSIONER'S AND STAFF'S QUESTIONS AND COMMENTS:**

Commissioner Lerner suggested that he could present information regarding the California State Historic Building Code and disabled access; the other commissioners were interested in hearing it.

**7. PUBLIC COMMENT:**

There was no public comment.

**8. ADJOURNMENT:**

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Thomas Fessler, Building Inspector  
Department of Building Inspection  
Secretary to the Access Appeals Commission