

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
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March 13, 2012

District Attorney George Gascón
San Francisco District Attorney's Office
Hall of Justice
850 Bryant Street, Room 322
San Francisco, CA 94103

**Re: Sunshine Complaint No. 11048, Pastor Gavin v. Supervisor Mar (Part 1) and Pastor Gavin v. Supervisor Chiu, Supervisor Wiener, and Supervisor Cohen (Part 2)
Notice of Willful Failure and Official Misconduct**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against San Francisco Board of Supervisors President David Chiu, Supervisor Eric Mar, Supervisor Scott Wiener, and Supervisor Malia Cohen for failure to comply with Sunshine Ordinance public meeting provisions (see S.F. Admin. Code Sec. 67) in Sunshine Complaint No. 11048, *Pastor Gavin v. Supervisor Mar* (Part 1) and *Pastor Gavin v. Supervisor Chiu, Supervisor Wiener, and Supervisor Cohen* (Part 2).

This referral is made in request for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct;"
- (2) Sunshine Ordinance Section 67.30(c) which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts;"
- (3) Section 54959 of the Brown Act (California Government Code Sections 54950-54963) whereby "each member of a legislative body who attends a meeting of that legislative

body where action is taken in violation of any provision of this chapter, and where the member intends to deprive the public of information to which the member knows or has reason to know the public is entitled under this chapter, is guilty of a misdemeanor” given that the violations noticed herein correspond to Brown Act Sections 54954.2 and 54954.3; and

- (4) Section 54960.1 of the Brown Act which provides authority for the District Attorney to “commence an action by mandamus or injunction for the purpose of obtaining a judicial determination that an action taken by a legislative body of a local agency in violation of Section 54953, **54954.2**, 54954.5, 54954.6, 54956, or 54956.5 is null and void under this section.” (Emphasis added.)

Background

Anonymous complainant “Pastor Gavin” filed a complaint with the Task Force on June 20, 2011 alleging Supervisor Eric Mar violated public meeting laws during the Board of Supervisor’s Land Use Committee meeting on May 24, 2011. Supervisor Mar is Chair of the Land Use Committee.

On August 23, 2011, the Task Force named the two other Land Use Committee members, Supervisor Wiener and Supervisor Cohen, and President Chiu as additional respondents to the complaint.

Task Force Hearings on Complaint

On August 23, 2011, the Task Force held the first hearing on the complaint. The Task Force found Supervisor Mar in violation of Sunshine Ordinance public meeting laws. The Task Force continued the complaint to its September 27, 2011 meeting and named President Chiu, Supervisor Wiener, and Supervisor Cohen as respondents to the complaint. A description of the hearing, violations found, the Task Force decision, and the reasoning behind the decision are described in the two Orders of Determination attached to this referral.

On September 27, 2011, the Task Force held the second hearing on the complaint. The Task Force found President Chiu, Supervisor Wiener, and Supervisor Cohen in violation of Sunshine Ordinance public meeting laws. The Task Force further found willful failure and official misconduct against all four respondents, and approved notice of this matter to the District Attorney’s Office. A description of the hearing, violations found, and the Task Force decision are described in the two Orders of Determination attached to this referral.

Thank you for your attention to this matter. Copies of the two Orders of Determination are attached.

Please confirm receipt of this notice to the Task Force Administrator at soft@sfgov.org or (415) 554-7724. The Administrator is also available to provide any additional information needed.



Hope Johnson, Chair
Sunshine Ordinance Task Force

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Encls.

cc: Pastor Gavin, Complainant
Board President David Chiu, Respondent
Supervisor Eric Mar, Respondent
Supervisor Scott Wiener, Respondent
Supervisor Malia Cohen, Respondent
Judson True, Legislative Aide to President Chiu
Andrea Bruss, Legislative Aide to Supervisor Cohen
Jerry Threet, Deputy City Attorney