

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

April 17, 2012

DATE THE DECISION ISSUED

January 3, 2012

ANONYMOUS v JOHN RAHAIM, ET AL., PLANNING (CASE NO. 11068)

FACTS OF THE CASE

Complainant "Anonymous" alleges that San Francisco Planning Department officials John Rahaim, Rick Cooper, Lulu Hwang, Tom DiSanto, Elizabeth Watty, and Keith DeMartini violated the Sunshine Ordinance in connection with eight requests for public information and public records regarding Parkmerced submitted between May 14, 2011 and July 21, 2011.

COMPLAINT FILED

On September 13, 2011, Anonymous filed six related complaints with the Sunshine Ordinance Task Force ("Task Force") alleging Planning Department officials violated Sunshine Ordinance Sections 67.21 (a) and (b), 67.25, 67.26, 67.28, and 67.33 by failing to adequately and timely respond to requests for public records related to Parkmerced.

HEARING ON THE COMPLAINT

On January 3, 2012, Anonymous appeared before the Task Force and presented the complaints. Brian Smith, IT Director for the Planning Department, appeared on behalf of the Planning Department and presented the response.

Between May 14, 2011 and July 21, 2011, Anonymous submitted by mail or facsimile eight related requests to the Planning Department for public information regarding the Parkmerced redevelopment project.

One request was mailed on June 2, 2011 to Senior Environmental Planner Rick Cooper and requested all information related to the Parkmerced redevelopment project by mail. Mr. Cooper received the request on June 3 and responded on June 22 by delivering a box of responsive documents to Anonymous.

On June 23, 2011, Anonymous faxed a letter to Mr. Cooper requesting fourteen pages of amendments added to the Parkmerced Development Agreement by Board President David Chiu on May 24, 2011, which were not included in the documents delivered on June 22. On June 29, Anonymous submitted a request for the same amendments to Staff Planner Elizabeth Watty. The request to Ms. Watty also included a request for "the transcripts of all public meetings pertaining to Parkmerced" prior to 2011, explaining that Mr. Cooper had provided only documents from 2011. Anonymous alleged no responses were received to the June 23 and June 29 requests.

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On July 7, 2011, Anonymous submitted to Ms. Watty a detailed list of the documents requested on June 29. On July 11, Operations & IT Administrator Lulu Hwang notified Anonymous the requested materials totaled approximately 3500 pages. She offered to produce electronic copies of the documents on a compact disc for a duplication fee of \$0.25 or paper copies for \$340.

Anonymous alleged that the electronic copy format did not provide adequate access to the records and that the Americans with Disabilities Act (“ADA”) requires the Department to accommodate the disability by waiving the fee for paper copies. On July 27, 2011, the Planning Department forwarded a waiver form to Anonymous to complete for consideration of a fee waiver based on financial hardship. Anonymous refused to complete the form, alleging a violation of ADA rights.

Mr. Smith responded that Mr. Cooper provided Anonymous with the Parkmerced Environmental Impact Report (“EIR”) documents on June 22, 2011. He stated EIR documents are generally provided at no cost when the EIR is still being considered. He further explained that Mr. Cooper might have erred in failing to charge Anonymous the duplication fee because the project had been approved and the EIR was no longer being reviewed.

Mr. Smith stated that the request submitted by Anonymous on June 2, 2011 required a response by more than one planner. He acknowledged that Mr. Cooper’s response on June 22 did not include the fourteen pages of amendments added by Supervisor Chiu. He further explained that Mr. Cooper works in the environmental section and provided the EIR documents then the request was forwarded to another planner for a response related to the development agreement. He stated he believed the final Development Agreement is currently available on the Planning Department web site.

The Planning Department alleged that Anonymous expanded the scope of the original request made on June 2, 2011 in later requests.

Mr. Smith repeated the Planning Department’s offer to consider a financial hardship waiver for duplication fees upon receipt of the required forms. He further offered to waive the \$0.25 fee for the electronic copies of the responsive documents on compact disc. He explained the Planning Department cannot be responsible for the duplication costs of all public records requests and is allowed to charge \$0.10 per page under Sunshine Ordinance Section 67.28.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force found that the request submitted by Anonymous on June 2, 2011 for “all information” that “pertains to the redevelopment of the project” constituted a request for all public records related to the Parkmerced project, including both the Planning Department’s EIR and Development Agreement records. Based on Mr. Smith’s statements and the Planning Department’s written response to the complaint, the Task Force further found that

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the Planning Department's response on June 22, 2011 did not include all responsive documents.

After reviewing the Planning Department web site, the Task Force additionally found that the final version of the Parkmerced Development Agreement signed on July 1, 2011 was not available on the web site as of the date of the Task Force hearing on this matter.

The Task Force further found that the Planning Department's responses were not timely under Sunshine Ordinance Section 67.21(b). In addition, the Task Force found that the incomplete response on June 22, 2011 followed by the duplication fee notice on July 11, 2011 constituted an unreasonable delay under Section 67.21(a), requiring Anonymous to wait over 30 days to receive the information that a duplication fee was necessary to receive a complete response in the desired paper format.

The Task Force concluded departments may charge a duplication fee not to exceed \$0.10 per page pursuant to Sunshine Ordinance Section 67.28(c). The Task Force further concluded that there is no requirement in the Sunshine Ordinance to waive duplication fees under ADA laws.

DECISION AND ORDER OF DETERMINATION

The Task Force finds the Planning Department in violation of Sunshine Ordinance Sections 67.21(a) for failure to provide Anonymous with copies of all Parkmerced project documents as requested on June 2, 2011 and June 23, 2011 without unreasonable delay; 67.21(b) for failure to provide Anonymous with copies of all Parkmerced project documents as soon as possible and within 10 days of the June 2, 2011 and June 23, 2011 requests; and 67.25(d) for failure to provide Anonymous with copies of all Parkmerced project documents on a rolling basis.

The Planning Department shall coordinate with Anonymous to release all of the Parkmerced project records as requested in a mutually acceptable format within 5 business days of the issuance of this Order and appear before the Compliance and Amendments Committee on May 15, 2012 at 4:00pm in Room 408 of City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 3, 2012 by the following vote: (Costa/Manneh)

Ayes: 7 - Knee, Manneh, Washburn, Costa, Wolfe, West, Johnson

Absent: 1 - Chan

Excused: 2 - Snyder, Cauthen



Hope Johnson, Chair
Sunshine Ordinance Task Force

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cc: Pastor Gavin, Complainant
Brian Smith, Planning Department IT Director, Respondent
John Rahaim, Planning Department Director, Respondent
Rick Cooper, Senior Environmental Planner, Respondent
Keith DeMartini, Planning Department Finance Manager, Respondent
Lulu Hwang, Operations & IS Administrator, Respondent
Elizabeth Watty, Planning Department Staff, Respondent
Jerry Threet, Deputy City Attorney