

Date: September 27, 2011

Item No. 8
File No. 11048

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Pastor Gavin v Supervisors Chiu, Wiener and Cohen**
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Completed by: Chris Rustom

Date: Sept. 22, 2011

***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**



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ORDER OF DETERMINATION
September 3, 2011

DATE THE DECISION ISSUED
August 23, 2011

PASTOR GAVIN v SUPERVISOR CHIU AND SUPERVISOR MAR (CASE NO. 11048)

FACTS OF THE CASE

Pastor Gavin and other anonymous complainants ("Complainants") allege that San Francisco Supervisor Eric Mar, Chair of the Land Use Committee of the Board of Supervisors, violated public meeting laws during the Land Use Committee meeting on May 24, 2011 when he allowed Supervisor David Chiu to introduce significant amendments to proposed legislation involving Parkmerced without providing copies of those amendments to the public and then voted on the amendments instead of continuing the item to a later meeting to provide the public opportunity to review them.

COMPLAINT FILED

On June 20, 2011, Complainants filed this complaint against Supervisor Mar, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

HEARING ON THE COMPLAINT

On August 23, 2011, Pastor Gavin presented Complainants' case to the Task Force. Lin-Shao Chin, legislative aide to Supervisor Mar, provided the response.

Pastor Gavin testified that May 24th was a dark day for the City and County of San Francisco when procedures were used at the Land Use Committee hearing and subsequent Board of Supervisors meeting which violated the Sunshine Ordinance. She said a week earlier, the San Francisco Civil Grand Jury reported that the Parkmerced Project's Mixed Use Program Development Agreement, for all its complexity, fails to mitigate the most significant risk it creates: the direct loss of statutory tenant rights by Parkmerced residents. At the Land Use meeting, Supervisor David Chiu asked committee members Supervisors Eric Mar, Malia Cohen, and Scott Wiener to add 14 pages of new revisions to the Development Agreement and forward it to the Board of Supervisors. No motion to continue the matter was made or voted on by the Committee. She said Supervisor Mar voted against adopting the amendments and he noted that there could be a possible Sunshine Ordinance violation involved. He was outvoted by Supervisors Cohen and Wiener on the motion to approve the amended item and refer it to the Board of Supervisors. Supervisor David

Campos echoed Supervisor Mar's Sunshine Ordinance violation concern at the full Board meeting later that day.

At both meetings, she said, the public, especially Parkmerced citizen tenants, were given only a two-page summary of Supervisor Chiu's newly proposed amendments to the Development Agreement and denied the opportunity to read the actual text of the 14 pages of amendments. She also said Deputy City Attorney Charles Sullivan told the Committee during the meeting that there was no need for additional public comment because the amendments were within the scope of the agreement noticed and the Committee had already heard comment from the public on the item. She said she disagreed with him because the item had been continued to the May 24th meeting only for purposes of considering four Environmental Impact Reports, whereas Supervisor Chiu's new revisions concern tenant rights. The 14 pages, she added, substantially change the Development Agreement and thus meet the requirement for additional public comment and continuation of the item vote to a later meeting.

Respondent Lin-Shao Chin testified that Supervisor Mar is not the appropriate focus of the complaint because the amendments were introduced by Supervisor Chiu and, moreover, Supervisor Mar was not in possession of the amendments before the meeting and was surprised by their introduction. She said she has seen no evidence that this complaint should be filed against Supervisor Mar. She noted that Supervisor Mar voted against the amendments, in support of the residents. She also testified that she was not aware of any attempt by Supervisor Mar to continue the item.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concluded that the introduction of 14 pages of proposed amendments without providing copies or adequate review time to members of the public should have prompted Supervisor Eric Mar, as Chair of the Committee, to try to continue the meeting, but instead the members proceeded to vote on the substance of the newly amended legislation. The Task Force further found that as the Chair of the Land Use Committee Supervisor Mar was an appropriate focus of the Complaint. The Task Force further noted that Supervisor Mar was heard several times during the Committee meeting stating that he wanted public comment over quickly and requesting members of the public not use the full amount of time provided for each speaker.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Supervisor Eric Mar violated Sunshine Ordinance Section 67.7(b) for not providing the public with copies of the amendments to the Development Agreement, which were provided to the policy body in connection with an agenda item; and Section 67.15(a) and (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments. The Task Force continues this complaint to the September 27, 2011 Task Force meeting and names Board President David Chiu and Land Use Committee members Supervisor Scott Wiener and Supervisor Malia Cohen as respondents to the original complaint.

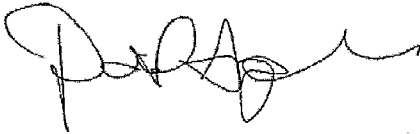
This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 23, 2011 by the following vote: (Knee/Costa)

Ayes: 6 - Snyder, Knee, Washburn, Costa, West, Johnson

Excused: 5 - Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat #1*
Sunshine Ordinance Task Force

- c: Pastor Gavin, Complainant
- Supervisor Eric Mar, Respondent
- Lin-Shao Chin, Respondent
- Supervisor David Chiu
- Supervisor Malia Cohen
- Supervisor Scott Wiener
- Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat #1 is a voting seat held by an attorney specializing in sunshine law.