

Date: January 3, 2012

Item No. 9 & 10

File No. 11063

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Anonymous v John Rahaim of the Planning Department**
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Completed by: Chris Rustom

Date: Dec. 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.



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## MEMORANDUM

*October 19, 2011:*

*ANONYMOUS VS. JOHN RAHAIM, PLANNING (11063)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant "Anonymous" alleges that John Rahaim, Department of City Planning ("Planning"), violated sections 67.7 (a), (b),(d); 67.7-1(a); 67.8; 67.15 (a)-(b); and 67.33 of the Ordinance because "his signature is on the document" (the "document" presumably referring to the Development Agreement).

#### COMPLAINANT FILES COMPLAINT:

On September 13, 2011, Anonymous filed a complaint with the Task Force.

#### JURISDICTION

Planning is a department under the Ordinance. The Task Force therefore generally has jurisdiction to hear a complaint of a violation of the Ordinance against Planning.

#### APPLICABLE STATUTORY SECTION(S):

- Administrative Code Section 67.7 governs descriptions of agenda items for a public meeting.
- Administrative Code Section 67.7-1 deals with the notice to be provided by City agencies to residents regarding any activity that may affect their property or the neighborhood.
- Administrative Code Section 67.8 deals with agenda requirements for closed sessions.
- Administrative Code Section 67.9 deals with when documents to be considered by members of a policy body must be made available to the public for inspection.
- Administrative Code Section 67.15 (a)-(b) deal with requirements for public comment on items on an agenda.
- Administrative Code Section 67.33 deals with department head declarations on Sunshine training.

#### APPLICABLE CASE LAW:

Please refer to cases cited in the analysis set out below.

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**ISSUES TO BE DETERMINED**

**Uncontested/Contested Facts:** Anonymous offers few factual allegations to support their complaint. The following factual recital is primarily comes from my review of the tape of the May 24, 2011 Land Use Committee meeting of the Board of Supervisors.

During its consideration of approval of an ordinance ratifying the Development Agreement ("DA") between the City and the Park Merced project developers, the Board of Supervisors ("BOS") held a series of meetings at which that Ordinance and the underlying DA was considered. These included the meeting of May 24, 2011, at which the DA was amended and then referred to the full Board of Superiors without recommendation.

The May 24, 2011 Land Use Committee agenda included the following description of item 2, the Ordinance approving the DA:

**110300**

**[Development Agreement - Parkmerced]**

**Sponsor: Elsbernd**

Ordinance approving a Development Agreement between the City and County of San Francisco and Parkmerced Investors, LLC, for certain real property located in the Lake Merced District of San Francisco, commonly referred to as Parkmerced, generally bounded by Vidal Drive, Font Boulevard, Pinto Avenue and Serrano Drive to the north, 19th Avenue and Junipero Serra Boulevard to the east, Brotherhood Way to the south, and Lake Merced Boulevard to the west; making findings under the California Environmental Quality Act, findings of conformity with the City's General Plan and with the eight priority policies of Planning Code Section 101.1(b); and waiving certain provisions of Administrative Code Chapter 56.

In addition, the front page of the agenda contained the following language: "*Note: Each item on the [ . . . ] agenda may include the following documents: 1) Legislation 2) Budget and Legislative Analyst report 3) Department [ ] cover letter and/or report 4) Public correspondence. These items will be available for review at City Hall, Room 244, Reception Desk.*"

The draft DA included with the Committee packet for the Agenda Item under consideration on May 24, 2011 had not been signed by Mr. Rahaim at the time of the Committee hearing. The DA was not finally signed by Mr. Rahaim until DATE, after its approval by the Board of Supervisors and signature by the Mayor.

The Chair of the Land Use Committee began consideration of the DA during the May 24, 2011 meeting by allowing BOS President Chiu to introduce a series of amendments to the DA for consideration by the Committee. Supervisor Chiu first summarized those amendments, then turned to City staff, including Michael Yarne of the Office of Workforce and Economic Development and DCA Charles Sullivan, to further describe the substance and effects of these proposed amendments to the DA. The participants described the amendments as intended to provide additional protections for tenants beyond those already provided by the DA. Following

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the comments of Mr. Yarne and DCA Sullivan, the Committee took extensive public comment on the agenda item, including the proposed amendments.

President Chiu indicated during his remarks that copies of the proposed amendments had been made available to members of the public through his office and through the office of the Clerk of the Board of Supervisors. This has been disputed by some members of the public, who said no copies of the amendments were available to them, only summaries of those amendments.

Following public comment, committee members adopted the proposed amendments without objection. Supervisor Weiner then moved to forward the Ordinance approving the amended DA to the full board that afternoon for its consideration, as a committee report, without recommendation from the committee. At that point, Supervisor Mar, the chair of the committee, stated that, due to the legal complexity of the proposed amendments, he favored continuing the item to give both supervisors and the public time to further digest the amendments before the amended DA was voted on by the committee. Based in part of this rationale, Supervisor Mar voted against the motion to refer the matter to the full board. Nevertheless, the motion to report the matter out to the full board passed, with Supervisors Weiner and Cohen voting in favor.

Prior to calling the question on the motion to refer, Supervisor Mar asked DCA Adams whether a continuance was legally required before taking a vote. Supervisor Mar asked if the amendments adopted by the Committee were "substantial" or could the Committee move forward that day and vote to refer the amended DA without continuing the item. DCA Adams replied that the "amendments made to the DA are within the scope of the notice of the meeting, [so the committee] can move forward without additional public comment."

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- What actions of Mr. Rahaim are alleged to have violated the sections mentioned in the complaint?
- Is compliance with any of the provisions of sections 67.7, 67.7-1, 67.8, or 67.15 that Anonymous alleges were violated, the responsibility of Mr. Rahaim? Or are they responsibilities carried out by members of the legislative body that considered approval of the DA?
- In what way does the complainant allege that Mr. Rahaim violated section 67.7 of the Ordinance, governing the adequacy of agenda descriptions?
- In what way does the complainant allege that Mr. Rahaim violated section 67.7-1 of the Ordinance, governing the notice to be provided by City agencies to residents regarding legislative activity that may affect their property or the neighborhood?
- In what way does the complainant allege that Mr. Rahaim violated section 67.7-8 of the Ordinance, governing agenda requirements for closed sessions?
- In what way does the complainant allege that Mr. Rahaim violated section 67.15 (a)-(b) of the Ordinance, governing requirements for public comment on items on an agenda?

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- In what way does Anonymous allege that Mr. Rahaim violated Section 67.33 of the Ordinance, which requires department heads to sign a declaration annually that they have read the Sunshine Ordinance and attended a training session thereon.

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Are any of the provisions of sections 67.7, 67.7-1, 67.8, or 67.15 that Anonymous alleges were violated, the responsibility of Mr. Rahaim? Or are they responsibilities carried out by members of the legislative body which consider approval of the DA?
- Was the description of the agenda item for approval of the DA sufficient to put a member of the public on notice that they may wish to make additional inquiry about the matter?
- Were supporting documents available for public review as required by section 67.7?
- If made available to the public, were such documents available for review within the time periods required by section 67.9?
- Did the proposed amendments to the DA trigger additional notice requirements under section 67.7-1 of the Ordinance beyond those already provided for consideration of the DA?
- Under section 67.15, was there a "substantial change" to the DA during the committee meeting that required additional public comment, beyond that which had been taken during the meeting?
- Do any of the allegations or facts related to this complaint support a conclusion that Mr. Rahaim has violated the requirement of Section 67.33 that she has read and received training on the Sunshine Ordinance?

**SUGGESTED ANALYSIS**

Agenda Description

It is unclear what Anonymous alleges was the deficiency in the agenda description of the Ordinance approving the DA. It also is unclear what Anonymous alleges was the action of Mr. Rahaim that violated Section 67.7 of the Ordinance.

The California Attorney General has concluded that, under Government Code § 54954.2, the agenda must include a sufficient description "to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body." See *The Brown Act: Open meetings for Local Legislative Bodies*. The courts have held that, under the Brown Act, "where the subject matter to be considered is sufficiently defined to apprise the public of the matter to be considered and notice has been given in the manner required by law, the governing body is not required to give further special notice." *Phillips v. Seely* (1974) 43 Cal.App.3d 104, 120.

While section 67.7 of the Ordinance provides more specific guidance as to what is required for an agenda description to be "meaningful," those requirements are similar to those enumerated in the *Phillips* case, above. Section 67.7(b) provides that the description should be "sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek

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more information on the item." On the other hand, that same provision goes on to add that "[t]he description should be brief, concise and written in plain, easily understood English." Thus, there remains the tension between the requirements that a description be brief and plain, and that it also convey sufficient information to alert the reader that the committee may act on a matter about which the reader may have an interest and may wish to find out additional information. The Task Force therefore must decide whether the agenda description quoted above was legally sufficient under the requirements of the Brown Act and the Ordinance.

In addition, Section 67.7 also requires that the agenda "shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item [ ] and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours." Page 1 of the agenda provides notice that such explanatory documents "will be available for review at City Hall, Room 244, Reception Desk." Therefore, the Task Force must decide whether the documents in question were next to the agenda at the time of the meeting, or otherwise available for review, as the agenda states.

In connection with this inquiry, the Task Force may wish to consider Section 67.9 of the Ordinance, which was not cited by Anonymous, but governs the time that such explanatory documents must be available for review by the public. Under those provisions, the explanatory documents must be available for review at approximately the same time they are made available to committee members, with some additional flexibility if they are made available to committee members only during consideration of the item. In the latter case, they should be made available immediately, or as soon thereafter as is practicable.

Finally, the Task Force may wish to consider whether, even if there was a violation of this provision, Mr. Rahaim was the City official legally responsible for such a violation.

*Notice re Affect On Neighborhood*

It is unclear how Anonymous alleges Section 67.7-1 was violated. It also is unclear what Anonymous alleges was the action of Mr. Rahaim that violated that section of the Ordinance. I have no information as to what public notices were provided pursuant to this section, if any.

The requirements of Section 67.7-1 as to public notices is similar to that of the Brown Act and Section 67.7 with regard to agenda items, with some differences. For example, any such notice must include "the effect of the proposal or activity." Therefore, with regard to the sufficiency of any notice under this section, the Task Force must decide whether it was brief concise and written in plain, easy to understand English. It also must decide whether any such notice met the additional requirements of 67.7-1(b), such as informing residents of the "effect of the proposal or activity." Finally, the Task Force may wish to consider whether the amendments adopted by the Land Use Committee on May 24, 2011 would have changed the "proposal" to such a degree as to require a new notice under this section.

Finally, the Task Force may wish to consider whether, even if there was a violation of this provision, Mr. Rahaim was the City official legally responsible for such a violation.

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Public Comment

It is unclear how Anonymous alleges Section 67.15 was violated. It also is unclear what Anonymous alleges was the action of Mr. Rahaim that violated that section of the Ordinance.

It appears from a review of the meeting video that public comment was allowed on the amendments to the DA during the committee meeting when they were introduced, and that public comment was vigorous. Some members of the public requested that the item be continued so as to give them additional time to review the amendments before the offered public comment. Some members of the public stated that they had not yet seen a copy of the proposed amendments to the DA.

Section 67.15(a) of the Ordinance is virtually identical to section 54954.3(a) of the Brown Act. Each provide that a legislative body need not take additional public comment on an item for which the public already has had an opportunity to address the body on the item, "unless the item has been *substantially changed* since the committee heard the item, *as determined by the legislative body.*" There appears to be no state case law that directly addresses what is meant by the term "substantially changed" as used in these two statutory provisions.<sup>1</sup> Nevertheless, several conclusions can be drawn.

First, it is important to note the rules governing statutory construction. To determine intent, one first turns to the words of the statute, itself. When the language of the statute is clear, one need go no further. However, when a provision is susceptible to more than one interpretation, one may look to the legislative history, the objects to be achieved, and the statutory scheme, in general. *Chafee v. San Francisco Public Library Commission (Chafee II)* (2005) 134 Cal.App.4<sup>th</sup> 109, 114. One must avoid an interpretation that renders a part of the statute "surplusage." *Chafee II, id.*

According to the language of the statutory provisions, the relevant inquiry is whether the DA, which was the agenda item in question, was *substantially changed* by the amendments adopted by the Land Use Committee at the May 24, 2011 meeting, "*as determined by the legislative body.*" In order to make that determination, there are two levels of analysis. First, the Task Force should consider the original DA, at the time the meeting was held, and compare its provisions with the DA after it was amended by the Committee. There appears to be general agreement among Committee members and members of the public, during the May 24, 2011 hearing, that the DA already contained provisions intended to protect tenants, and that the amendments purported to offer additional tenant protections. The Task Force will need to decide

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<sup>1</sup> The Northern District U. S. Court did hold, however, that there was no "substantial change" justifying additional public comment where an agenda item was changed by deleting a phrase from a resolution calling for impeachment of President George Bush and Vice-President Cheney, after the resolution was considered by committee but prior to being voted on by the full Board of Supervisors. See *Jenkel v. CCSF* (2006) 2006 U.S. Dist. LEXIS 49923 at pp. 15-17.

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whether, taken in their entirety, the amended DA constituted a *substantial change* from the DA as it existed prior to the amendments adopted by the Committee.<sup>2</sup>

Second, state and local statutory provisions appear to lodge discretion with the legislative body in making the determination of whether amendments make a substantial change mandating a continuance and additional public comment. The interplay between obedience to a public duty (such as required public comment) and the exercise of discretion by a public official (such as making a determination whether an amendment triggers additional public comment) is most often analyzed in the context of a petition for a writ of mandate. Such a petition seeks to have a court force a public official to comply with an asserted public duty. In that context, courts have held that mandate "lies only when the petitioner shows the respondent failed to act upon a clear, ministerial duty to do so[.]" *International Federation of Professional & Technical Engineers, AFL-CIO v. City and County of San Francisco* (1999) 76 Cal.App.4<sup>th</sup> 213, 224. "[T]he writ of mandate is not a writ of right to be freely issued whenever a court disagrees with the policy of the administrative action." *Barnes v. Wong* (1995) 33 Cal.App.4<sup>th</sup> 390, 396. Accordingly, "mandamus will not lie to control the discretion of a public official or agency; that is, to force the exercise of discretion in a particular manner." *Gordon v. Horsley* (2001) 86 Cal.App.4<sup>th</sup> 336, 350-51; *Unnamed Physician v. Bd. Of Trustees of St. Agnes Medical Center* (2001) 93 Cal.App.4<sup>th</sup> 607, 618.; see also, *Hiatt v. Berkeley* (1982) 130 Cal.App.3d 298, 323.

While the Task Force is not a court considering a petition for a writ of mandate, the principles involved in analyzing this issue are similar and may provide guidance to the Task Force in considering the Land Use Committee's exercise of its delegated discretion in deciding whether amendments to the DA required additional public comment. Under such principles, the Task Force would need to find not merely that it disagrees with the decision of the Committee, but to find further that the Land Use Committee abused its discretion in determining that there was no "substantial change" in the DA that would require a continuance.

Finally, the Task Force may wish to consider whether, even if there was a violation of this provision, Mr. Rahaim was the City official legally responsible for such a violation.

*Department Head Declaration*

It is unclear how Anonymous alleges Section 67.33 was violated. It also is unclear what Anonymous alleges was the action of Mr. Rahaim that violated that section of the Ordinance.

Section 67.33 contains a relatively simple requirement: that a department head annually sign and file a declaration under penalty of perjury that they have read the Ordinance and have

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<sup>2</sup> The City Attorney's Office argues in its response to Complaint numbers 11066 and 11067 that there was no "substantial change" for two reasons. First, there already were significant tenant protections in the DA and therefore amendments offering additional tenant protections did not materially alter the agenda item under consideration. Second, the Ordinance adopting the DA already included a provision allowing the Planning Director to amend it in ways that were "in the best interests of the City and that [did] not materially increase the obligations or liabilities of the City or decrease the benefits to the City." Thus, argues the CAO, the Ordinance already would have allowed the Planning Director to make the changes the Committee added in the amendments through legislative action, and therefore the amendments did not substantially change the substance of the agenda item.



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attended a training session on its requirements. To demonstrate a violation of this provision, a complainant would need to present evidence that Mr. Rahaim had failed to sign and file the requisite declaration.

Remedies

It is unclear from the complaint what remedies Anonymous is seeking should the Task Force conclude that the Ordinance was violated. It also appears that no remedy is available that would affect the validity of the legislative action of the Land Use Committee should the Task Force find a violation on this complaint.

Prior to amendments to the Brown Act in 1986, the validity of an action taken in violation thereof was not affected by that violation. *Centinela Hospital Association v. Didi Hirsch Psychiatric Service* (1990) 225 Cal.App.3d 1586, 1598; *Stribling v. Mailliart* (1970) 6 Cal.App.3d 470, 474; *Adler v. City Council of Culver City* (1960) 184 Cal. App. 2d 763, 774. The rationale of these holdings was that, in the absence of specific statutory remedies invalidating official action of a public body, the law was directory rather than mandatory. See *Stribling*, 6 Cal.App.3d at 474; *Adler*, 184 Cal. App. 2d at 774. In addition, in *Stribling*, the Court further held that then San Francisco Charter Section 19(f), which required that meetings of commission be open to the public, also was directory and not mandatory. The Court therefore found that an alleged violation of this local charter provision would not invalidate action taken by a commission. *Stribling*, 6 Cal.App.3d at 475. The Sunshine Ordinance also does not include remedies allowing invalidation of a legislative act taken in violation of its provisions.

The Brown Act was amended in 1986 to provide for proceedings in state court to invalidate legislative actions taken in violation of certain of some of its provisions. See *Gov't Code Section 54960.1*. Such an action may be brought for a violation of requirements governing agenda descriptions (§ 54954.2), closed sessions (§ 54954.5), meetings concerning adoption of new taxes (§ 54954.6), special meetings (§ 54956), or emergency meetings (§ 54956.5). Absent these specific provisions of the Brown Act, the law remains the same for violations of public meeting provisions – a violation does not invalidate an act taken by the legislative body. In addition, the Brown Act specifies that these remedies are available through an action in state court for mandamus. For these reasons, the Task Force has no power to invalidate any action taken in violation of the Ordinance or the Brown Act.

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE **TRUE OR NOT TRUE.**

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**ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED**

**SECTION 67.7 - AGENDA REQUIREMENTS; REGULAR MEETINGS**

(a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a *meaningful description of each item of business* to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.

(b) A description is meaningful if it is *sufficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item.* The description should be *brief, concise and written in plain, easily understood English.* It shall refer to any **explanatory documents** that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and *such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours."*

(d) No action or discussion shall be undertaken on *any item not appearing* on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.

**SECTION 67.7 -1 – PUBLIC NOTICE REQUIREMENTS**

(a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be *brief, concise and written in plain, easily understood English.*

(b) The notice should *inform the residents of the proposal* or planned activity, the length of time planned for the activity, the *effect of the proposal or activity*, and a telephone contact for residents who have questions.

(c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted.

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**SEC. 67.8. AGENDA DISCLOSURES: CLOSED SESSIONS.**

(a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.2, any mailed notice given pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:

(1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:  
\_\_\_\_\_ applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR  
Property:

\_\_\_\_\_  
Person(s) negotiating:

\_\_\_\_\_  
Under negotiation:

Price: Terms of payment: Both: \_\_\_\_\_

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL  
Existing litigation:

\_\_\_\_\_ Unspecified to protect service of process

\_\_\_\_\_ Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL

Anticipated litigation:

\_\_\_\_\_ As defendant \_\_\_\_\_ As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City's ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City's ability to conclude existing settlement negotiations to its advantage, in which instance the space

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in the next succeeding line shall be checked. If the closed session is called pursuant to Subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City's anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

THREAT TO PUBLIC SERVICES OR FACILITIES Name, title and agency of law enforcement officer(s) to be conferred with:

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or:

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

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SAN FRANCISCO ADMINISTRATIVE CODE CHAPTER 67 (SUNSHINE ORDINANCE)

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

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or:

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

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or:

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR—COLLECTIVE BARGAINING

Name and title of City's negotiator:

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Organization(s) representing:

\_\_\_\_\_ Police officers, firefighters and airport police

\_\_\_\_\_ Transit Workers

\_\_\_\_\_ Nurses

\_\_\_\_\_ Miscellaneous Employees

Anticipated issue(s) under negotiation:

\_\_\_\_\_ Wages

\_\_\_\_\_ Hours

\_\_\_\_\_ Benefits

\_\_\_\_\_ Working Conditions

\_\_\_\_\_ Other (specify if known)

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All

Where renegotiating a memorandum of understanding or negotiating a successor memorandum of under-standing, the name of the memorandum of under-standing:

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In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956.

**SEC. 67.9. AGENDAS AND RELATED MATERIALS: PUBLIC RECORDS.**

- (a) Agendas of meetings *and any other documents on file with the clerk* of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting *shall be made available to the public*. To the extent possible, such documents shall also be made available through the policy body's Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.
- (b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.
- (c) Records which are subject to disclosure under subdivision (a) and *which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion*.
- (d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting *shall be made available for public inspection immediately or as soon thereafter as is practicable*.

**SEC. 67.15. PUBLIC TESTIMONY.**

- (a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, **the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the**

**Memorandum  
Privileged & Confidential**

DATE: October 19, 2011  
PAGE: 13  
RE: Anonymous v. Rahaim (11063)

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item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

**SEC. 67.21. - PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS;  
ADMINISTRATIVE APPEALS.**

(i) The San Francisco City Attorney's office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and **shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public.**

**SEC. 67.33. DEPARTMENT HEAD DECLARATION.**

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force.

**SAN FRANCISCO MUNICIPAL CHARTER**

**SEC. 6.102. - CITY ATTORNEY.**

The City Attorney shall:

1. Represent the City and County in legal proceedings with respect to which it has an interest;  
[ ]
2. Represent an officer or official of the City and County when directed to do so by the Board of Supervisors, unless the cause of action exists in favor of the City and County against such officer or official;
3. Whenever a cause of action exists in favor of the City and County, commence legal proceedings when such action is within the knowledge of the City Attorney or when directed to do so by the Board of Supervisors, except for the collection of taxes and delinquent revenues, which shall be performed by the attorney for the Tax Collector;
4. Upon request, provide advice or written opinion to any officer, department head or board, commission or other unit of government of the City and County;  
[ ]

**Memorandum  
Privileged & Confidential**

DATE: October 19, 2011  
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RE: Anonymous v. Rahaim (11063)

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**SECTIONS 54950.ET SEQ. OF THE CAL. GOVERNMENT CODE (BROWN ACT)**

**SECTION 54954.2 - AGENDA; POSTING; ACTION ON OTHER MATTERS**

(a) At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a *brief general description of each item of business* to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words.

**54954.3. OPPORTUNITY FOR PUBLIC TO ADDRESS LEGISLATIVE BODY;  
ADOPTION OF REGULATIONS; PUBLIC CRITICISM OF POLICIES**

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address the legislative body on any item of interest to the public, before or during the legislative body's consideration of the item, that is within the subject matter jurisdiction of the legislative body, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by subdivision (b) of Section 54954.2. However, the agenda need not provide an opportunity for members of the public to address the legislative body on any item that has already been considered by a committee, composed exclusively of members of the legislative body, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, **unless the item has been *substantially changed* since the committee heard the item, as determined by the legislative body.** Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.

(b) The legislative body of a local agency may adopt reasonable regulations to ensure that the intent of subdivision (a) is carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker.

(c) The legislative body of a local agency shall not prohibit public criticism of the policies, procedures, programs, or services of the agency, or of the acts or omissions of the legislative body. Nothing in this subdivision shall confer any privilege or protection for expression beyond that otherwise provided by law.

Sep 07 11 03:45p

Sunshine Ord. Task Force

415-554- J4

p.3

Sep 07 11 03:18p

415

p.3



SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
Tel. (415) 554-7724; Fax (415) 554-7854.
http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission Land Use Committee Meeting

Name of individual contacted at Department or Commission John Rahaim
Director Planning Dept

Alleged violation public records access
Alleged violation of public meeting. Date of meeting May 24, 2011

Sunshine Ordinance Section 67.7 Agenda Requirements
(if known, please cite specific provision(s) being violated)

Please describe alleged violation. Use additional paper if needed. Please attach any relevant documentation supporting your complaint.

67.7-1 Public Notice, 67.8 Agenda Disclosures,
67.33 Dept Head Declaration.

Please see letters that accompany the two complaints

Do you want a public hearing before the Sunshine Ordinance Task Force? [x] yes [ ] no
Do you also want a pre-hearing conference before the Complaint Committee? [ ] yes [x] no

(Optional) Name Address

Telephone No. E-Mail Address [redacted]@gmail.com

Date Sept 7, 2011

I request confidentiality of my personal information. [x] yes [ ] no
Signature

NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE CALIFORNIA PUBLIC RECORDS ACT AND THE SUNSHINE ORDINANCE, EXCEPT WHEN CONFIDENTIALITY IS SPECIFICALLY REQUESTED. YOU MAY LIST YOUR BUSINESS/OFFICE ADDRESS, TELEPHONE NUMBER AND E-MAIL ADDRESS IN LIEU OF YOUR HOME ADDRESS OR OTHER PERSONAL CONTACT INFORMATION. Complainants can be anonymous as long as the complainant provides a reliable means of contact with the SOTF (Phone number, fax number, or e-mail address).



Land Use Committee Meeting May 24, 2011

|   |          |  |   |
|---|----------|--|---|
| Supervisor Malia Cohen  | 05/24/11 | 67.7 a - b, d Agenda<br>Requirements, 67.7-1a<br>Public Notice, 67.8 Agenda<br>Disclosures, 67.15 a-b<br>Public Testimony,   | Stated that she would have preferred to have received the material ahead of time like the members in the audience however, Michael Yarne had spoken to her briefly the day before and therefore she was aware of the 14 pages of revisions had not been seen or read by members of the public. Shee votes to amend the Development Agreement and to forward the revisions before the full Board of Supervisors with less than 2 hours before it convenes. |
| Supervisor Scott Wiener   | 05/24/11 | 67.7 a - b, d Agenda<br>Requirements, 67.7-1a<br>Public Notice, 67.8 Agenda<br>Disclosures, 67.15 a-b<br>Public Testimony,   | He is aware that members of the public have not seen or read the 14 pages of revisions. He votes to amend the Development Agreement and to forward the revisions before the full Board of Supervisors with less than 2 hours before it convenes.  |
| Jennifer Matz - Executive Director<br>Office Workforce Economic<br>Development  | 05/24/11 | 67.7 a - b, d Agenda<br>Requirements, 67.7-1 a,<br>Public Notice, 67.8 Agenda<br>Disclosures, 67.33 Dept<br>Head Declaration | Executive Director Matz is Micharel Yarne's boss. There must be accountability regarding the affairs of the city. Employees must be supervised.   |
| Michael Yarne - Project Manager<br>His quote can be found 6 minutes :<br>10seconds at the beginning of the<br>meeting regarding Parkmerced. | 05/24/11 | 67.7 a - b, d Agenda<br>Requirements, 67.7-1 a,<br>Public Notice, 67.8 Agenda<br>Disclosures, 67.15 a-b<br>Public Testimony  | At the beginning of the meeting regarding the 14 pages of revisions, Mr. Yarne states "generally organizational and technical clean up are made to the document. Changes are organizational in nature there are no substance to the changes only adding clarity to the document".   |

p4  
p4

415-554-7854  
415-554-7854

Sunshine Ord. Task Force  
Sep 14 11 12:14p

Sep 14 11 11:52a  
Received Fax :

Land Use Committee Meeting May 24, 2011

| Name  | Date     | Violation Section   | Incident  |
|---|----------|---|---|
| Charles Sullivan, City Attorney<br>He speaks shortly after Mr. Yarne<br>His comments begin after Mr. Yarne,<br>begins which is near the beginning of<br>the tape. | 05/24/11 | 67.7 a - b, d Agenda<br>Requirements, 67.7-1a<br>Public Notice, 67.8 Agenda<br>Disclosures, 67.15 a-b<br>Public Testimony,<br>67.21 (i) Access to Public<br>Records | In his own words Attorney Sullivan admits to working on the 14 pages of revisions the night before the meeting. As a result, he is aware that only a few people have read the revisions. He violated the rights of the people by not allowing them to access public information and the opportunity to provide meaningful public comment. |
| Cheryl S. Adams, City Attorney<br>Her comments are made near the very<br>end of the meeting. The time on the<br>tape is 3hrs:2min:50sec                           | 05/24/11 | 67.7 a - b, d Agenda<br>Requirements, 67.7-1a<br>Public Notice, 67.8 Agenda<br>Disclosures, 67.15 a-b<br>Public Testimony,<br>67.21 (i) Access to Public<br>Records | In her own words Attorney Adams states "The amendments made to the development agreement are within the scope for the notice of the meeting. You can move forward without additional public comments". These comments are made near the very end of the meeting.  |
| John Rahaim, SF Planning Director   | 05/24/11 | 67.7 a - b, d Agenda<br>Requirements, 67.1-1 a<br>Public Notice, 67.8 Agenda<br>Disclosures, 67.33 Dept<br>Head Declaration   | Mr. Rahaim's signature is on the document. At some point he must have been apprised of the changes to the documents. He knows that the mailing of the agenda and publication of the agenda are no longer the same because substantial changes have been made to the document. He is accountable as Dept Director.                         |
| Board Supervisor David Chiu   | 05/24/11 | 67.7 a - b, d Agenda<br>Requirements, 67.7-1a<br>Public Notice, 67.8 Agenda<br>Disclosures, 67.15 a-b<br>Public Testimony,  | As President of the Board he violated his fiduciary responsibility twice by introducing the amendments at the meeting. Second the public did not have the opportunity to read the Phantom 14 pages of revisions. The amendments were forwarded to the full Board with less than 2 hours before it was to convened.                        |

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p.5

415-554-7854  
415

Sunshine Ord. Task Force  
415

Sep 14 11 12:15p  
Sep 14 11 11:52a



Brian  
Smith/CTYPLN/SFGOV  
10/06/2011 01:43 PM

To SOTF/SOTF/SFGOV@SFGOV  
cc  
bcc

Subject Re: Sunshine Complaint Received: #11063\_Anonymous v  
John Rahaim, Planning Department 

History:  This message has been replied to.

SOTF,

This Sunshine complaint has no merit and we contest jurisdiction. The Land Use Committee is a Board of Supervisor's (BOS) entity and Planning has no jurisdiction over Agendas or Public Notices being published. Furthermore, The Development Agreement for Parkmerced (we assume this is the document in question) was NOT signed by Mr. Rahaim until well after the date of 5/24/11.

On May 24, 2011, at the Board of Supervisors' Land Use Committee, Board President David Chiu introduced 14 pages of amendments to the Development Agreement. The Land Use Committee voted to move the DA along with those changes onto the full Board of Supervisors without recommendation as a Committee Report. After 2 readings at the Board, the Board approved the final DA - which included the 14 pages of amendments introduced by David Chiu - through Ordinance No. 89-11 on June 7, 2011. It was signed into law on June 9, 2011 by the Mayor.

Attached is the final signed and recorded Development Agreement and the approving Ordinance.

Planning's Parkmerced Web site <http://sfplanning.org/index.aspx?page=2529> lists and dates all updates to the DA for the public to view.

Please contact me with any further questions.

Sincerely,



As  
recorded  
part  
1.pdf

Brian Smith  
Director IT / Operations  
San Francisco Planning Department  
1650 Mission St Suite 400  
415-575-6835  
Brian.Smith@SFgov.org

3  
RECORDING REQUESTED BY  
CLERK OF THE BOARD OF SUPERVISORS  
OF THE CITY AND COUNTY OF SAN FRANCISCO

(Exempt from Recording Fees  
Pursuant to Government Code  
Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo  
Clerk of the Board of Supervisors  
City Hall, Room 244  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102



San Francisco Assessor-Recorder  
Phil Ting, Assessor-Recorder  
**DOC- 2011-J209959-00**

Acct 28-SFCC Board of Supervisors

Thursday, JUL 07, 2011 12:09:39

Ttl Pd \$0.00 Rcpt # 0004178461

**REEL K433 IMAGE 0396**

oar/ER/1-324

**DEVELOPMENT AGREEMENT**

**BY AND BETWEEN**

**THE CITY AND COUNTY OF SAN FRANCISCO  
AND PARKMERCED INVESTORS PROPERTIES LLC  
RELATIVE TO THE DEVELOPMENT KNOWN AS  
THE PARKMERCED DEVELOPMENT PROJECT**



An Explanation of Cases

to:

sotf

12/18/2011 01:50 PM

Hide Details

From: [REDACTED] <[REDACTED]@hotmail.com>

To: <sotf@sfgov.org>

History: This message has been replied to.

Dear Sunshine Task Force Chair Hope Johnson:

Enclosed in this e-mail is an explanation of the cases that pertain to the Land Use Committee / Board of Supervisors meetings on May 24, 2011.

Issue: Was the Sunshine Ordinance Violated at the Land Use Committee Meeting?

The following cases pertain to the **Land Use Ctm meeting May 24, 2011;**

- #11063 John Rahaim - Planning Director
- #11064 Michael Yarne - Parkmerced Project Manager
- #11065 Jennifer Matz - Mr. Yarne's boss
- #11066 Charles Sullivan - City Attorney
- #11067 Cheryl Adams - City Attorney

#11068 Planning Dept - (not involved with the a meeting) multiple employees may have violated my rights in my attempt to access the Parmerced documents

In the letter of determination the Sunshine Task Forced unanimously ruled that the Land Use Committee illegally excluded public testimony regarding the 14 pages of revisions. Furthermore, there was conflicting statement from various city employees about the 14 pages of revisions being substantive or

non-substantive. The other people who were a part of the meeting are the respondents named above.

Mr. Rahaim - Planning Director is suppose to adhere to the Sunshine Ordinance

Mr. Yarne - at the beginning of the video says that there are no substantive changes. Sunshine determined there were major changes to the development agreement.

Ms. Matz - is boss of Mr. Yarne and she is responsible for the training of her employees and she must sign a declaration for Sunshine.

City Attorneys Charles Sullivan - wrote the revisions and stated he worked on them the night before. Attorney Adams gave vague comments about the public rights to comment. Both of them have violated Sunshine 67.21 (i). The attorneys are named twice because they did not correct their violations of the public's rights at the BOS meeting later that afternoon. Especially when Supervisor David Campos cited there might be a violation of the Brown Act.

The Planning Dept is named along with various employees because they refused to release the documents to me. You have copies of the letters I sent to them.

The following cases are for the **BOS meeting on May 24, 2011:**

During the meeting with the full Board of Supervisors less than 2 hours after the Land Use Committee later that afternoon, the Board of Supervisors are aware that the public did not have the opportunity to read or give meaning public comment on the 14 pages of revisions that were added to their agenda.

Some of the Board members state that they did not have the opportunity to read the 14 pages of revisions before the meeting began. Supervisors Avalos, Mar and Campos raised the objections to the 14 pages of revisions. However, it was Supervisor Campos who cited there could be possible violations of the Brown Act if they proceeded with the meeting. He also asked City Attorney Cheryl S. Adams if she could cite case law regarding the situation and she did not.

Supervisor Chiu also stated to a member of the public during public comment that they could not speak to the Parkmerced issue and they could send an e-mail.

The Board of Supervisors error was not to allow public comment on the 14 pages of revisions because it has been ruled that the 14 pages of revisions were not properly place on the agenda.

- #11072 Supervisor Elsbernd
- #11073 Supervisor Cohen
- #11074 Supervisor Carmen Chu
- #11075 Supervisor Weiner
- #11076 Supervisor Farrell
- #11077 Supervisor Chiu
- #11078 Planning Director John Rahaim
- #11079 City Attorney Cheryl Adams
- #11080 City Attorney Charles Sullivan