Date: January 3, 2012

Item No. 11 & 12
File No. 11078

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.

CITY AND COUNTY OF SAN FRANCISCO

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MEMORANDUM

November 21, 2011:

ANONYMOUS VS. JOHN RAHAIM, PLANNING (11078)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant "Anonymous" alleges that John Rahaim, Department of City Planning ("Planning"), violated sections 67.7 (a), (b),(d); 67.15 (a)-(c); 67.21(a); and 67.33 of the Ordinance related to the May 24, 2011 meeting(s) of the Board of Supervisors ("BOS").

COMPLAINANT FILES COMPLAINT:

On October 6, 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 67.15 (a)-(c) deal with requirements for public comment on items on an agenda.
- Administrative Code Section 67.21 governs the process for gaining access to public records or information.
- 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.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts: Anonymous offers no factual allegations or documentation to support their complaint. On November 17, 201,1 the Task Force administrator followed up by email to Anonymous with the following statement: "Can you provide documentation to support your claims because the Deputy City Attorney has to write an

instructional memo for each complaint for the Task Force and minus your documentation that memo may not be a factual representation of facts." Anonymous responded with the following statement: "The meeting I am pertaining to is for the BOS meeting on May 24, 2011." Because Mr. Rahaim is not a member of the BOS, and did not appear to have participated in either meeting, it is difficult to assess which meeting that day Anonymous refers to. Nevertheless, I present here facts related to both the Land Use Committee meeting that day and the full BOS meeting, for a more complete understanding.

The following factual recital is derived primarily from my review of the video recordings of the May 24, 2011 Land Use Committee and full board meetings of the Board of Supervisors, as well as the agenda packets.

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 were considered. These included the meeting of May 24, 2011, at which the DA was amended by the Land Use Committee and then referred to the full Board of Superiors without recommendation for its consideration later that same afternoon. They also included the full board meeting later that day, when the ordinance approving the amended DA was finally passed.

Land Use Committee Meeting

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 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 Mr. Yarne and DCA Charles Sullivan, to further describe the substance and effects of this 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. The Committee then 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.[1]

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 to the full board, 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."

Full Board of Supervisors Meeting

The May 24, 2011 full Board of Supervisors agenda included the following description of item 25, 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

[1] Supervisor Chiu's claim was disputed by members of the public during a previous hearing on another Sunshine Complaint by "Pastor Gavin." Anonymous has presented no factual allegations or evidence disputing Supervisor Chiu's contentions in support of this complaint, however.

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, page 3 of the agenda contained the following language: "*Agenda Item Information: Each item on the Consent or Regular agenda may include the following documents: 1) Legislation 2) Budget and Legislative Analyst report 3) Department or Agency cover letter and/or report 4) Public correspondence. These items will be available for review at 1 Dr. Carlton B. Goodlett Place, City Hall, Room 244, Reception Desk on the Friday preceding a regularly scheduled Board meeting.*"

The full Board of Supervisors took up this agenda item at the beginning of its meeting later that afternoon. Board President Chiu recognized Supervisor Elsbernd to introduce the item, who gave a brief argument for why it was a beneficial project for the City. He then turned to his argument why the project was in the best interests of the residents of Park Merced, and gave the strongest possible protections to tenants, while also arguing that a failure to approve the project presented major risks that tenants would face significant rent increases for capital improvement "pass-throughs."

President Chiu then surrendered the chair to Supervisor Mirikarimi and was recognized to speak on the agenda item.[2] Supervisor Chiu then spoke to his focus on tenant protections as a part of this project and described and summarized the amendments that he introduced and were adopted by the Land Use Committee earlier that day. The chair then clarified that all supervisors had copies of the amendments that had been adopted in the committee meeting.

Supervisor Campos then spoke to his efforts to find a compromise between the developers and tenant representatives concerning possible additional tenant protections that might allow the project to be supported by these tenants. Supervisor Campos acknowledged that many of the ideas raised in those discussions were included in Supervisor Chiu's amendments adopted that day, but noted that they still did not satisfy the tenant advocates who were concerned with the uncertain state of the law. Supervisor Campos said he did not support the item because the tenant representatives were not satisfied and there remained legal uncertainty as to whether the tenant protections would survive a court challenge.

Supervisor Avalos then also opposed the ordinance for similar reasons enunciated by Supervisor Campos, as well as additional reasons related to the agreement itself. Supervisor Avalos then said he would be moving to amend the DA to add other tenant protections.

The chair then asked the DCA whether it was possible for the BOS to amend the DA in this manner. DCA Adams responded that a DA was a contract between two parties, the City and

[2] Before he could do so, a member of the public attempted to present public comment, was ruled out of order by the chair, and was threatened with removal from the chambers by the Deputy Sheriffs if she refused to stop her testimony. Later in Supervisor Chiu's comments, the same member of the public again began shouting and was removed from the board chambers.

the developer, and it was not possible for the BOS to unilaterally amend the DA without the consent of the developer. DCA Adams further opined that the ordinance approving the DA could be amended by the BOS, but not in such a way that it would impose binding terms on the parties without their consent. The chair then recognized other speakers while Supervisor Avalos considered this advice.

Supervisor Mar spoke about the Land Use Committee hearing that morning, stating that while the proposed project was otherwise admirable, he believed it would destroy the existing character of the neighborhood and end a way of life for an entire community. He further said he would like a continuance to allow participants to more carefully consider the 14 pages of amendments offered at the Land Use Committee meeting that morning.

The chair then asked the DCA what would be the effect of a continuance at that point in the procedural process of project approval. DCA Adams responded that the Planning Commission had approved a General Plan Amendment as part of its earlier review of the project, and that the BOS had 90 days to approve or reject the Commission's action. She further stated that the May 24, 2011 meeting was the last one at which the BOS could reject the GA amendment and its failure to act would result in automatic approval of the Commission's action.

Supervisor Avalos then moved he still wanted to move his proposed amendment to the DA, and asked the DCA why his amendment was legally different from those adopted that morning by the Land Use Committee. DCA Sullivan responded that the 14 pages of amendments adopted that morning had already been agreed to by the developer prior to their introduction.

Supervisor Campos then stated that there were 14 pages of "very extensive and substantive amendments" that had been adopted that morning, and asked the DCA how the adoption of such amendments could be legal under the Brown Act when the agenda description did not mention anything about such amendments. DCA Adams responded that the agenda notice for that item was so broad that it covered both the tenant protections that were already in the DA and the amendments that had been adopted, and while the BOS could continue the item and allow additional public comment, it was not required to do so. Supervisor Campos then asked whether the DCA could cite case law to support that opinion and whether the City Attorney's Office believed that the 14 pages of amendments were "substantive changes or non-substantive changes." DCA Adams responded that the term "substantive" as used in the governing Brown Act and Sunshine Ordinance provisions was a "term of art" and the amendments were not substantive "for that purpose." She then also stated that the amendments did contain changes that were otherwise substantial.

Supervisor Campos then asked what was the level of "substantive" or "substantial" that was needed to trigger a requirement that the matter be renoticed and heard again. DCA Sullivan responded that the ordinance itself, which was the agenda item in front of the BOS, was not being amended. He reviewed the wording of the ordinance, which generally described the DA, including certain specific tenant protections, and stated that ordinance approved a DA "substantially in the form that was in the BOS file for the agenda item. He further stated that, if the amendments had changed any of those aspects specifically described by the wording of the

ordinance, or if the amendments were such that they DA was no longer "substantially in the form" as that which was in the BOS file prior to the amendments, then it might require renoticing. Since it did not, no renoticing was required, he opined.

Supervisor Campos responded that the DCA's explanation confused him more than it clarified the matter, and that he believed taking action on the matter without a continuance and renoticing would be a violation of the Sunshine Ordinance and the Brown Act.

Supervisor Weiner then stated that he would be supporting the EIR and project that day. He then stated that he believed the project offered much stronger tenant projections than were included in the Trinity project previously passed by a former BOS. He then stated that he did not believe the amendments adopted that day by the Land Use Committee legally required any continuance of the legislation, as those amendments simply strengthened tenant protections that were already present in the DA, and thus did not substantially change the nature of the agenda item under consideration.

Supervisor Chiu then asked DCA Sullivan to review the tenant protections that were in the DA prior to his amendments, the tenant protections added by his amendments, and to offer an opinion on whether specific tenant protections would be enforceable. DCA Sullivan reviewed the legal context created by the state Costa Hawkins Act, which generally prohibits application of rent control to newly constructed apartment units, with some exceptions. DCA Sullivan explained why the City Attorney's Office believed that the specific tenant protections included in the DA were within the exceptions allowed by Costa Hawkins and would give the City a strong position in defending the application of rent control to replacement units in the Park Merced project, should they be attacked in court. He also discussed additional tenant protections in the DA that would provide for substantial liquidated damages should the rent control provisions of the DA be struck down by the courts, in order to provide the City with the "benefit of its bargain" in agreeing to the DA.

Supervisor Chu then expressed her view that the City had done everything possible to provide tenant protections and that the Chiu amendments only made these protections stronger.

The BOS then voted on the agenda item, which passed by a vote of 6-5, with Supervisors Chiu, Chu, Cohen, Elsbernd, Farrell, and Weiner in support.

Planning had not responded to this complaint at the time of this memo.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- What actions of Mr. Rahaim are alleged to have violated the sections mentioned in the complaint?
- 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 67.15 (a)-(c) of the Ordinance, governing requirements for public comment on items on an agenda?

- In what way does the complainant allege that Mr. Rahaim violated section 67.21 (a) of the Ordinance, governing the process for obtaining access to public records?
- 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, 67.8, 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?
- 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?
- Were requirements of Section 67.21 related to providing public records violated?
- 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 he declare that 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 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 Land Use Committee agenda and page 3 of the full BOS 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.

Even if the Task Force finds a violation of these sections, it may wish to consider whether Mr. Rahaim is responsible for such violations, as it does not appear that he participated in the May 24, 2011meetings.

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 videos that public comment was allowed on the amendments to the DA during the May 24, 2011 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.[3] 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.4th 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 Ordinance approving the DA, which was the agenda item in question, was ***substantially changed*** by the amendments to the DA 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 ordinance approving the DA, at the time the committee meeting was convened, and compare its provisions with the ordinance after the DA 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 whether, taken in their entirety, the amendments to the DA created a *substantial change* in the ordinance approving the DA as it existed prior to the amendments adopted by the Committee.

Second, the governing 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 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.4th 213, 224. "[T]he writ of mandate is not a writ of right to be freely issued whenever a court disagrees

[3] 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.

with the policy of the administrative action." *Barnes v. Wong* (1995) 33 Cal.App.4th 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.4th 336, 350-51; *Unnamed Physician v. Bd. Of Trustees of St. Agnes Medical Center* (2001) 93 Cal.App.4th 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 exercise of delegated discretion by the Land Use Committee or full BOS 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 these bodies, but to find further that the supervisors in question abused their discretion in determining that there was no "substantial change" in the ordinance approving the DA that would require a continuance.

Even if the Task Force finds a violation of these sections, it may wish to consider whether Mr. Rahaim is responsible for such violations, as it does not appear that he participated in the May 24, 2011meetings.

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 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 Board of Supervisors 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.**

Memorandum

DATE: November 21, 2011
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RE: Anonymous v. Rahaim (11078)

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.

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.***

Memorandum

DATE: November 21, 2011
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RE: Anonymous v. Rahaim (11078)

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 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.**
(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are 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. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once ***for up to*** three minutes. Time limits shall be ***applied uniformly*** to members of the public wishing to testify.

SEC. 67.21. PROCESS FOR GAINING ACCESS TO PUBLIC RECORDS; ADMINISTRATIVE APPEALS.
(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.
(b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.

Memorandum

DATE: November 21, 2011
PAGE: 14
RE: Anonymous v. Rahaim (11078)

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;
[ ]

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.

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 Planning Department

Name of individual contacted at Department or Commission John Rahaim

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

Sunshine Ordinance Section 67.7 (a,b,d) 67.15 (a-c) 67.21(a) 67.33
(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 Agenda Requirements: Regular Meetings 67. a, b, d
67.15 Public Testimony (a-c)
67.21(a) Process for Gaining Access to Public Records
67.33 Dept. Head Declaration

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

(*Optional*)[1]
Name _____ Address _____

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

Date _____ _____
Signature

I request confidentiality of my personal information. ☑ yes ☐ no

[1] 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).

07/31/08

Evidence
[redacted]
to:
sotf
10/25/2011 05:21 PM
Hide Details
From: [redacted] <[redacted]@hotmail.com>

To: <sotf@sfgov.org>

Hello Mr. Rustom:

The meeting I am pertaining to is for the BOS meeting on May 24, 2011.

> Subject: Re: Evidence
> To: [redacted]@hotmail.com
> From: sotf@sfgov.org
> Date: Tue, 25 Oct 2011 11:53:00 -0700
>
> There were several meetings that day. Which meeting video is your testimony
> dependent on?
>
> Chris Rustom
> Sunshine Ordinance Task Force
> City Hall, Rm. 244, San Francisco, CA 94102
> sotf@sfgov.org, (415) 554-7724, fax: (415) 554-7854
>
>
>
>
> From: [redacted] <[redacted]@hotmail.com>
> To: <sotf@sfgov.org>
> Date: 10/17/2011 06:22 PM
> Subject: Evidence
>

>
>
> Hello SOTF:
>
> The evidence that I am using is the video of the meeting on May 24, 2011.
>
> > Subject: Re:
> > To: [redacted]@hotmail.com
> > From: sotf@sfgov.org
> > Date: Thu, 13 Oct 2011 11:30:27 -0700
> >
> > Can you provide documentation to support your claims because the Deputy
> > City Attorney has to write an instructional memo for each complaint for
> the
> > Task Force and minus your documentation that memo may not be a factual
> > representation of facts. Also, please be aware that there are about 15
> > items that need to be heard ahead of you and, based on the number of
> > complaints, yours and many others stand a very low chance of being heard
> > this month.
> >
> >
> >
> >
> >
> > [redacted]
> > <[redacted]@hotma
> > il.com> To
> > <sotf@sfgov.org>
> > 10/11/2011 07:07 cc
> > PM
> > Subject
> >
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> >
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> >
> > Thank you for scheduling the complaints regarding the Board of
> Supervisors
> > meeting held on May 24, 2011 for October 25, 2011.
> >
>

An Explanation of Cases
[redacted]
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 respondants 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