

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION**

November 1, 2011

**DATE THE DECISION ISSUED**

September 27, 2011

*PASTOR GAVIN v SUPERVISOR CHIU, SUPERVISOR WIENER, AND SUPERVISOR COHEN (CONTINUATION OF CASE NO. 11048)*

**FACTS OF THE CASE**

On August 23, 2011, the Sunshine Ordinance Task Force ("Task Force") heard Complaint No. 11048, Pastor Gavin v. Supervisor Mar. The Task Force found that, during the May 24, 2011 Board of Supervisor's Land Use and Economic Development Committee meeting, San Francisco Supervisor Eric Mar, Chair of the Land Use Committee, violated several sections of the Sunshine Ordinance by failing to provide the public with copies of 14 pages of amendments to the Parkmerced Development Agreement, which were provided to the policy body by Board President David Chiu in connection with an agenda item, and by allowing the introduction of the last-minute and substantive changes to the relevant agenda item without adequate notice.

The Task Force continued the complaint to its September 27, 2011 meeting and named the other two Land Use Committee members, Supervisors Scott Wiener and Malia Cohen, and Board President David Chiu as respondents to the complaint.

**COMPLAINT FILED**

The original complaint was filed on June 20, 2011, alleging violations of Sunshine Ordinance Sections 67.7 and 67.7-1.

**HEARING ON THE COMPLAINT**

On September 27, 2011, Pastor Gavin and her supporters presented their case to the Task Force. Judson True, legislative aide to President Chiu, Gillian Gillette, legislative aide to Supervisor Wiener, and Andrea Bruss, legislative aide to Supervisor Cohen, presented the response.

Pastor Gavin testified that she and her Parkmerced neighbors learned at the May 24th Land Use Committee meeting of the introduction of 14 pages of amendments to the Parkmerced Development Agreement. She said many residents did not know how the 14 pages correlated with the entire document. She also said they were not allowed to provide

public comment on a document that would directly affect their homes. Several of Pastor Gavin's supporters told the Task Force that members of the public were provided with only a two-page summary of the amendments, not the full 14 pages.

Pastor Gavin said it is chilling and disturbing for an American citizen and a San Francisco resident to watch the video of the meeting and see what transpired. She said every time she watches the tape she notices something new, such as Supervisor Cohen admitting that she had not seen the revisions prior to the meeting and that she only spoke briefly about it with Michael Yarney of the Office of Economic and Workforce Development.

Pastor Gavin noted that none of the Land Use Committee members had seen the revisions, only Board President Chiu and Deputy City Attorney Charles Sullivan who wrote the document. The issue, she said, is about the loss of homes for 5,000 residents, the destruction of 1,000 trees, habitat destruction, the violation of agenda requirements under the Sunshine Ordinance, and the unpatriotic way the elected officials behaved to push through the document to the Board of Supervisors which was meeting two hours later.

Mr. True said the agenda for the Land Use Committee on May 24, 2011, included a proposed ordinance approving the Parkmerced Development Agreement and a copy of the 200-page contract between the City and the developer. The contents of the revised 14 pages, he said, further strengthened the protections provided to residents. Mr. True said he personally distributed copies of the amendments as well as a two-page summary to whoever requested copies at both the Land Use meeting and the following full Board meeting. The Supervisors have to seek the advice of the City Attorney and in this case the advice was that the revisions were within the scope of the agreement that was noticed and could be forwarded to the full Board without the need for additional public comment. He added that changes to an underlying document do not trigger a continuance or public comment as was the case in several matters before the Supervisors such as the Hunters Point Shipyard project. In response to Task Force inquiries, Mr. True said he could think of no reason that the Committee could not have continued the hearing to provide opportunity for the public to review the amendments, other than the upcoming budget process.

Ms. Gillette said the Supervisors did not violate the Sunshine Ordinance by following the advice of the City Attorney. She said the Task Force appears to be suggesting it could cite a supervisor for an action the City Attorney has deemed legal. She said the Task Force cannot tell the Supervisors how to vote and what motions to make because the Supervisors are accountable only to the voters. She said the transcript of the Board meeting will show that statements made by Deputy City Attorney Cheryl Adams at the Committee meeting are reaffirmed by Deputy City Attorney Charles Sullivan, specifically that this is a revision to a contract. She said Deputy City Attorney Adams also added that the noticing was broad and did not require the need for additional public comment.

Ms. Bruss said Supervisor Cohen does not think she and the other Supervisors on the Land Use Committee violated the Sunshine Ordinance by not continuing the hearing on the agreement. She said copies of the amendments were made available to anyone who wanted the document. The Supervisors based their decisions on the advice of the City Attorney, she said.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony it received, the Task Force found that neither the members of the Land Use Committee nor the public had sufficient time to adequately review and analyze the 14 pages of amendments. The Task Force further found that the amendments worked a significant enough change in the meeting agenda to warrant a new notice and a continued meeting. Based on respondent Mr. True's testimony, the Task Force further found that the Land Use Committee had no reason that the hearing could not have been continued. The Task Force concluded that the 14 pages of amendments to the Development Agreement were not adequately noticed in the agenda. The Task Force further concluded that, given the late introduction of significant changes to the content of the Land Use Committee's meeting, Board President Chiu and members of the Committee should have continued the hearing so that it could be properly noticed as required under the Sunshine Ordinance.

### DECISION AND ORDER OF DETERMINATION

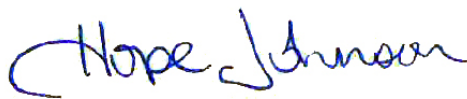
The Task Force found that President David Chiu, Supervisor Scott Wiener, and Supervisor Malia Cohen violated Sunshine Ordinance Section 67.7(b) for not providing the public with copies of the amendments to the Development Agreement which were provided to the policy body in connection with an agenda item, and Sections 67.15(a) and (b) for failing to adequately notice the substance of the relevant agenda item based on the last minute and substantive change to the item created by the introduction of the 14 pages of amendments. The two Orders of Determination in this complaint are to be referred to the Ethics Commission and the District Attorney for willful failure and official misconduct.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on September 27, 2011 by the following vote: (Washburn/Manneh)

Ayes: Snyder, Knee, Cauthen, Manneh, Washburn, Wolfe, Chan, Johnson

Excused: Costa, West

Absent: Knoebber



Hope Johnson, Chair  
Sunshine Ordinance Task Force



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

cc: Pastor Gavin, Complainant  
Supervisor David Chiu  
Supervisor Malia Cohen  
Supervisor Scott Wiener  
Judson True, legislative aide to President Chiu  
Andrea Bruss, legislative aide to Supervisor Cohen  
Gillian Gillette, legislative aide to Supervisor Wiener  
Jerry Threet, Deputy City Attorney

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