

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

February 14, 2012

DATE THE DECISION ISSUED

December 14, 2011

RAY HARTZ v CITY ATTORNEY DENNIS HERRERA (CASE NO. 11071)

FACTS OF THE CASE

Complainant Ray Hartz alleges that City Attorney Dennis Herrera violated Sections 67.15(d), 67.16, and 67.21(i) of the Sunshine Ordinance by acting as legal counsel for City Charter boards and commissions for the purpose of denying access to the public in regard to the placement of written summaries by members of the public in minutes of meetings of public bodies.

COMPLAINT FILED

On October 4, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against City Attorney Dennis Herrera alleging violations of Sunshine Ordinance Sections 67.15(d), 67.16, 67.21(i).

HEARING ON THE COMPLAINT

On December 14, 2011, Ray Hartz presented his complaint to the Task Force. Jack Song, Deputy Press Secretary to the City Attorney's Office, represented respondent Dennis Herrera.

Mr. Hartz told the Task Force that the Task Force has consistently found in *Ray Hartz v. Library Commission* (Case No. 10054) and *Ray Hartz v. Public Library* (Case No. 11054) that public comment summaries of 150 words or less submitted by members of the public pursuant to Sunshine Ordinance Section 67.16 must be placed within the body of the minutes and not as an addendum. The reason, he said, was to prevent abridging of public comment.

Mr. Hartz said the City Attorney's Office continues to advise City departments and boards that these summaries may be attached to the minutes, despite Task Force findings otherwise. He said the State Attorney General has found there must be a compelling state interest to abridge public comment, and the City Attorney has provided no evidence of a compelling interest to abridge public comment by attaching the summaries to the minutes, rather than including them within the body of the minutes.

The only reason for not placing the summaries within the body of the minutes is to stifle dissent, Mr. Hartz said. The City Attorney's Office, he said, has cited only the Good Government Guide in advising the summaries may be attached to the minutes. By appending his summaries, he said, the summaries are placed out of context and what appears in the minutes is a note taker's interpretation of his statements during public comment. He said it allows public input to be placed behind disclaimers.

Mr. Song told the Task Force in response to the complaint that Section 67.16 of the Sunshine Ordinance does not require the summaries be placed within the body of the minutes. He said the section is silent on where the summaries should be located in the minutes.

Mr. Song said the City Attorney's Office did not instruct the Library Commission to omit Mr. Hartz's 150-word summaries in the Sunshine complaints cited by Mr. Hartz. The advice given to all departments, he said, is that public comment summaries provided by speakers may be attached to the minutes and then cross-referenced in the body of the document. Individual boards and commissions can decide to place the summaries wherever they choose, he said.

The Board of Supervisors, Mr. Song said, should be made aware of this issue because Section 67.16 does not indicate where in the minutes the summaries must be placed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force acknowledges its interpretation of Section 67.16 with regard to placement of public comment summaries in minutes differs from the interpretation of the City Attorney's Office. The Task Force interprets the phrase "included in the minutes" in Section 67.16 by using the plain meaning of the words, and finds the summaries must be placed within the body of the minutes. The Task Force does not interpret the phrase "in the minutes" to include the meaning "attached to the minutes," and finds no justification for authorizing an attachment where no reference to an attachment is made.

Based in part on the purpose of the Sunshine Ordinance to maximize public access to public information and public meetings, the Task Force finds that the most reasonable interpretation of the plain language of Sunshine Ordinance Section 67.16 is that public comment summaries of 150 words or less submitted by members of the public shall be included within the body of the minutes, not as attachments.

The Task Force further finds that Sunshine Ordinance Section 67.21(i) requires the City Attorney's Office to act to protect the rights of the public to access public information and public meetings.

DECISION AND ORDER OF DETERMINATION

PART ONE

The Task Force shall notify all City departments and agencies that including public comment summaries as attachments to meeting minutes, instead of including such comments in the body of the minutes, violates Sunshine Ordinance Section 67.16, notwithstanding the City Attorney's advice to the contrary.

Part One of this Order of Determination was adopted by the Sunshine Ordinance Task Force on December 14, 2011 by the following vote: (Costa/Washburn)
Ayes: Snyder, Cauthen, Manneh, Washburn, Costa, West, Johnson
Noes: Knee, Wolfe
Absent: Chan

PART TWO

The Task Force finds the City Attorney's Office in violation of Sunshine Ordinance Section 67.21(i) for continuing to advise clients that public comment summaries may be attached to minutes. That advice is inconsistent with the Sunshine Ordinance's requirement that the "City Attorney's Office shall act to protect and secure the rights of the people of San Francisco to be able 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."

The Task Force recommends the City Attorney's Office reconsider its interpretation of Section 67.16 to avoid confusion over placement of public comment summaries in the minutes and to comply with the requirement to maximize public access to public information and public meetings.

Part Two of this Order of Determination was adopted by the Sunshine Ordinance Task Force on December 14, 2011, by the following vote: (Costa/Washburn)
Ayes: Cauthen, Manneh, Washburn, Costa, Wolfe, West
Noes: Snyder, Knee, Johnson
Absent: Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



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

cc: Ray Hartz, Complainant
Dennis Herrera, Respondent
Jack Song, Respondent
Jerry Threet, Deputy City Attorney

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