

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION

March 1, 2011

DATE THE DECISION ISSUED

January 20, 2011

RAY HARTZ v POLICE COMMISSION (CASE NO. 10050)

FACTS OF THE CASE

Complainant Ray Hartz alleges that the San Francisco Police Commission ("Commission" or "Respondent") has violated Sunshine Ordinance ("Ordinance") Section 67.15(d) due to Commissioner Thomas Mazzucco interrupting his public comments on an agenda item at the September 22, 2010, Commission meeting, and due to Commission President Joe Marshall allowing this interruption.

COMPLAINT FILED

On September 27, 2010, Mr. Hartz filed a complaint against the Commission.

HEARING ON THE COMPLAINT

On January 20, 2011, Mr. Hartz presented his case to the Task Force. The Commission was represented by Police Lt. Tim Falvey.

Mr. Hartz said he had spoken for approximately 35 seconds on the movement of an item on the agenda when Mr. Mazzucco interrupted, saying Mr. Hartz could comment only on the substance of the item. Mr. Hartz said Section 67.15(d) says a policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employees is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of the section. Mr. Hartz said he was prevented from talking about the movement of an agenda item during public comment because that topic was on the agenda, and was again prevented from addressing the movement of an agenda item because such movement had nothing to do with the substance of the item on the agenda. Mr. Hartz said he told Mr. Mazzucco that he had violated the constitutional rights of the public who wanted to provide public comment but was unable to because the Commission made changes to the agenda and the item was called after a 4-hour closed session.

Lt. Falvey said Mr. Mazzucco stopped Mr. Hartz to clarify that his comment was on a specific item and Mr. Hartz was then allowed to proceed. He said Mr. Hartz chose not to do so and stepped away from the podium. He said Mr. Hartz made a similar statement during public comment on the following agenda item. He also said the Commission did not abridge

what Mr. Hartz had to say.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judging from the testimony and evidence presented, the Task Force finds that Mr. Hartz's comments to the Commission constituted criticism protected by Section 67.15(d), and that the Commission abridged that criticism in violation of same.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the agency violated Section(s) 67.15(d) of the Sunshine Ordinance for abridging Mr. Hartz's criticism of the Commission's actions. The matter is referred to the Education, Outreach and Training Committee.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 20, 2011, by the following vote: (Johnson/Washburn)
Ayes: Snyder, Manneh, Washburn, Knoebber, Johnson, Knee
Excused: Cauthen, Wolfe
Recused: Chan



Richard A. Knee, Chair
Sunshine Ordinance Task Force



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

c: Ray Hartz, Complainant
Police Lt. Tim Falvey, Respondent
Jerry Threet, Deputy City Attorney

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