

Date February 28, 2012

Item No. 12

File No. 11088

**SUNSHINE ORDINANCE TASK FORCE**  
AGENDA PACKET CONTENTS LIST

**ITEMS**

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Memorandum  
Complaint submittal\*  
Correspondence

**OTHER**

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Completed by: Andrea Ausberry Date February 22, 2012

Completed by: \_\_\_\_\_ Date \_\_\_\_\_

\*An asterisked item represents the cover sheet to a document that exceeds 25 pages.  
The complete document is in the file.



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## MEMORANDUM

*December 27, 2011:*

*RAY HARTZ VS. ETHICS COMMISSION (11088)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz alleges that the Ethics Commission ("Ethics") violated sections 67.16 of the Ordinance by failing to include his 150-word written statement, summarizing his public comment, in the body of the minutes of the Commission's January 10, 2011 meeting.

#### COMPLAINANT FILES COMPLAINT:

On October 19, 2011, Mr. Hartz filed a complaint with the Task Force.

#### JURISDICTION

Ethics is a charter department under the Ordinance. The Task Force generally has jurisdiction to hear a complaint of a violation of the Ordinance against Ethics. Ethics *contests* this jurisdiction by arguing that there is nothing in the Ordinance that provides for a Task Force hearing on violations of the public meeting provisions of the Ordinance.

#### APPLICABLE STATUTORY SECTION(S):

##### Sunshine Ordinance (S.F. Administrative Code Section 67.1, et seq.)

- Section 67.16 governs the inclusion in the minutes of an 150-word statement of a member of the public summarizing their public comment made during a meeting.

#### APPLICABLE CASE LAW:

See citations in analysis, below.

#### ISSUES TO BE DETERMINED

**Uncontested/Contested Facts:** Mr. Hartz alleges that, despite SOTF rulings on complaints 10054 and 11054, Ethics "has violated [section 67.16] by failing to include a 150 word summary provided, relating to public comment in the body of the minutes."

The Task Force has previously found in the above-mentioned complaints that section 67.16 of the Ordinance requires that "the Ordinance states in simple, plain language that the 150-word statement must be "in the minutes" and that requirement is not satisfied by attaching the

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statement as an addendum at the end of the minutes. The Task Force further noted that the statements should be within the body of the minutes to prevent public officials from unlawfully abridging unwanted or critical public comment." See Order of Determination, Complaint 11054.<sup>1</sup>

Through Mr. St. Croix, Ethics does not dispute that it continues to treat the requirements of section 67.16 in a manner that differs from the Order of Determination ("OD") in Complaint 11054 and the amended OD in Complaint 10054. Their response to the substance of the complaint is multiple: 1) Ethics was not informed of the ODs prior to its February 14, 2011 meeting at which the minutes in question were approved, and thus cannot be held to the new standard announced in those ODs; and 2) Ethics has previously held a hearing on this issue and determined that the attachment of a 150-word statement to the minutes is a proper way to comply with Section 67.16.<sup>2</sup>

Thus, the facts do not appear to be in dispute; only the interpretation of what is legally required of Ethics in complying with section 67.16.

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Is the Task Force authorized by the Ordinance to make determinations regarding alleged violations of its public meetings provisions?
- Does the requirement of Section 67.16 that Ethics include a 150 word summary of testimony in its minutes, specifically require the inclusion of that summary in the body of the minutes under that agenda item?
- Does including the 150 word summary as an addendum to the meeting minutes violate Section 67.16?
- Assuming so, does the previous finding of the Task Force that it had allowed compliance with section 67.16 through an attachment to the minutes, excuse the failure of Ethics to include the summary in the body of the minutes?
- Does the lack of notice to Ethics of the two ODs cited by complainant remove their obligation to comply with the requirements of section 67.16 as interpreted by the Task Force in those two ODs?

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<sup>1</sup> While I have advised that the language of section 67.16 does not require these precise steps in order for a department to comply with its provisions, the Task Force has found otherwise.

<sup>2</sup> Ethics also contends that the Task Force reconsideration of its OD in Complaint 10054 was improper and that this prevents Ethics from being required to comply with the amended OD issued as a result. Ethics' analysis of this issue focuses specifically on whether the Task Force's reconsideration of its OD complied with the requirements for a motion to reconsider under the procedures adopted by the Task Force for complainants. However, the Task Force did not proceed under that procedure in amending its OD, but rather under a distinct procedure to reconsider a finding issued in error, under its own motion. Therefore, this argument of Ethics is inapposite and will not be separately analyzed in this memorandum.

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**SUGGESTED ANALYSIS****Under Section 67.16 of the Ordinance:**

- Determine whether Ethics' inclusion of complainant's statement as an addendum to its minutes violates the requirements of Section 67.16.

**Jurisdiction Issue**

Ethics argues that the Task Force lacks jurisdiction to hear and adjudicate this complaint because the Ordinance contains no provision specifically setting out a hearing procedure for alleged violations of its public meetings provisions. Ethics points out, correctly, that the only provision of the Ordinance setting out a procedure for the Task Force to issue determinations is section 67.21(e), included in Article III of the Ordinance dealing with public records, and that section mentions only determinations regarding whether a document is a public record. In contrast, Article II, dealing with public meetings, includes no similar provision authorizing the Task Force to make determinations regarding public meetings.

The question, then, is one of the intent of the ordinance. 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.*

The Ordinance clearly sets out a procedure in Article III for the Task Force to determine "whether the record requested is public." See Ordinance section 67.21(e). Article III specifically addresses requirements for public information and public records. In contrast, Article II specifically addresses requirements for public meetings, but makes no mention of a role for the Task Force in making determinations under that article. While a statute should not be interpreted in a way that "give[s] the words a literal meaning if to do so would result in an absurd result that was not intended[.]" *People v. Pieters* (1991) 52 Cal.3d 894, 898, Ethics' proposed interpretation does not result in an absurd result. Section 67.35 provides that "any person may institute proceedings" to enforce the provisions of the Ordinance through court action [subsection (a)], or before the Ethics Commission [subsection (d)], and may recover attorneys' fees for successful court action [subsection (b)]. Thus, Complainants will not be without a remedy for violations of the public meetings provisions of the Ordinance under this interpretation, which is consistent with a literal reading of the words of the Ordinance.

The Task Force therefore must determine whether the absence of specific authority under the Ordinance for it to hear violations of public meetings provisions, deprives the Task Force of authority to hear this complaint. If it answers yes to this inquiry, the Task Force would lack jurisdiction to issue an OD in this matter.

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**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****SEC. 67.16. MINUTES.**

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person's statement during the public comment period for each agenda item, and the time the meeting was adjourned. Any person speaking during a public comment period may supply *a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes.*

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

(e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request **may petition the Sunshine Task Force for a determination whether the record requested is public.** The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person's request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney's office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may **conduct a public hearing concerning the records request denial.** An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.



RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO

2011 OCT 19 PM 4:01

RC

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 SAN FRANCISCO ETHICS COMMISSION

Name of individual contacted at Department or Commission JOHN ST. CROIX

Alleged violation public records access

Alleged violation of public meeting. Date of meeting 1/10/2011

Sunshine Ordinance Section 67.16 MINUTES  
(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.

THE ETHICS COMMISSION HAS VIOLATED THE ABOVE SECTION BY FAILING TO INCLUDE A 150 WORD SUMMARY PROVIDED, RELATING TO PUBLIC COMMENT, IN THE BODY OF THE MINUTES IAW PREVIOUS SOTF DERRIDATIONS #10054 (AS REVISED) AND #11054.

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) Name RAY WHARTZ, JR Address 839 LEAVENWORTH ST, #304 SAN FRANCISCO CA 94109

Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SBCGLOBAL.NET

Date 10/19/2011 Signature Ray Whartz

I request confidentiality of my personal information.  yes  no

<sup>1</sup> 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).

January 10, 2011

In accordance with the San Francisco Sunshine Ordinance of 1999, section 67.16 MINUTES, I ask the following statement be entered in the minutes of this meeting. From the above listed section: *"Any person speaking during the public comment period may supply a brief written summary of their comments, which shall, if no more than 150 words, be included in the minutes."*

**The placement of this summary, as an attachment to the minutes, violates the clear wording of the Sunshine Ordinance. The Ethics Commission has made specious arguments to justify this variance from the law. The Brown act clearly states, "...any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest." It goes on to say, "...that prohibiting critical comments was a form of viewpoint discrimination." Further, "such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue." The placement of public comment summaries, in variance with the law, is intended to relegate those comments to a position of secondary validity. In reality, it serves no other purpose. Does anyone believe that a member of the commission would, objecting to how their comments were reported in the minutes, be denied the opportunity to correct the record?**



**Minutes - January 11, 2011** SHARE

TEXT

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**Minutes of the Regular Meeting of  
The San Francisco Ethics Commission  
January 10, 2011  
Room 408, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102**

**I. Call to order and roll call.**

Chairperson Studley called the meeting to order at 5:34 PM and welcomed the new Commissioner, Beverly Hayon.

COMMISSION MEMBERS PRESENT: Jamiene Studley, Chairperson; Eileen Hansen, Commissioner; Beverly Hayon, Commissioner; Benedict Y. Hur, Commissioner. Commissioner Ward was excused from the meeting.

STAFF PRESENT: John St. Croix, Executive Director; Mabel Ng, Deputy Executive Director; Catherine Argumedo, Investigator/Legal Analyst.

OFFICE OF THE CITY ATTORNEY: Andrew Shen, Deputy City Attorney.

OTHERS PRESENT: Peter Warfield; Ray Hartz; David Pilpel; Charles Marsteller; and other unidentified members of the public.

**MATERIALS DISTRIBUTED:**

- Staff memorandum re: Complaint Disposition (No. 01-100115), dated October 14, 2010.
- Staff memorandum re: Proposed Amendments to the Campaign Consultant Ordinance, dated January 6, 2011.
- Draft Campaign Consultant Ordinance amendments, dated January 4, 2011.
- Memorandum from the Office of the City Attorney re: Retention of Outside Counsel for Advice Regarding the 2011 Mayoral Election
- Minutes of the Regular Meeting of the San Francisco Ethics Commission on December 13, 2010.
- Executive Director's Report to the Ethics Commission for the Meeting of January 10, 2011.

**II. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission**

Ray Hartz stated that section 67.16 of the Sunshine Ordinance states that "any person speaking during the public comment period may supply a brief written summary... which shall, if no more than 150 words, be included in the minutes." He objected to the placement of a written summary as an attachment to the minutes. He asked what the compelling state interest was in refusing to follow the Sunshine Ordinance and refusing to place a summary in the minutes. He stated that the Ethics Commission is enumerated in the Charter and is required to follow Sunshine. He stated that the *Good Government Guide* gives an opinion that attaching the minutes is sufficient, but the law states "in the minutes." [Mr. Hartz also submitted a written statement which has been included at the end of these minutes. ]

Peter Warfield then asked whether he would be permitted to make comments about agenda item 3 now and later. Chairperson Studley stated that the Commission would not address item 3 during the meeting. Executive Director St. Croix stated that the item was to be heard, but staff was unable to reach one of the parties. He stated that the party contacted the office earlier that day and asked for a continuance. He granted the continuance, as the party was unable to come to the meeting.

Chairperson Studley apologized for any inconvenience and for the short notice and asked for public comment.

Peter Warfield stated that he serves on a committee with Ms. Cauthen, but he was not speaking as a member of that committee. He stated that he agreed generally with Mr. Hartz. He stated that the inclusion of the summaries in the minutes is appropriate and intended to permit someone to read along what the person has said.

Mr. Warfield stated that he was extremely disappointed regarding the cancellation of item 3. He stated that his plans have been affected and he would have appreciated some notice. He made several comments regarding staff's memorandum of item 3. He stated that staff stated Ms. Gomez violated section 67.15 of the Sunshine Ordinance, but then later recommended the dismissal of the violation. He informed the Commission of another incident in March where he experienced similar treatment from Ms. Gomez. He stated that staff's memorandum downplayed the incident dramatically. He stated that Ms. Gomez yelled at Ms. Cauthen and asked the Commission to listen to the meeting tape or view the meeting DVD.

Chairperson Studley stated that she allowed Mr. Warfield to speak as though he spoke for two items, as there was a possibility that Mr. Warfield would not be able to return for a future meeting.

Commissioner Hansen asked Mr. Warfield a question about his first point regarding staff's recommendation about Ms. Gomez. She stated that staff's recommendation was not to dismiss the violation against Ms. Gomez, but against Ms. Blackman. Mr. Warfield stated that he was unclear as to why it would be dismissed against either of them, when the violation had occurred. He stated that he raised the question for the Commission to discuss the issue. Chairperson Studley stated that the Commission could not discuss the merits of the item, until it is placed on the agenda.

Mr. Hartz asked whether he would have additional time since Mr. Warfield was given additional time. He stated that he had been at last month's Ethics Commission meeting. He stated that he too had been disrupted by Ms. Gomez and that he had to justify his right to speak. He stated that Ms. Gomez would not come to the Ethics Commission to explain her behavior. He mentioned a Police Commissioner who had also committed a Sunshine and Brown Act violation and failed to explain his behavior.

**III. Consideration of Ethics Complaint No. 01-100115, alleging that the Library Commission, through its representative Secretary Sue Blackman, violated Sunshine Ordinance sections 67.15(a) and 67.34 by failing to allow public comment at a Library Commission meeting, and section 67.21(e) by failing to send a knowledgeable representative to Task Force hearings.**

Item continued.

Public Comment:

None.

**IV. Consideration of possible amendments to the Campaign Consultant Ordinance ("Ordinance"), San Francisco Campaign and Governmental Conduct code section 1.500 et seq.**

Decision Point 2

Commissioner Hansen stated that she had concerns regarding this decision point, as the voters should have full participation. Executive Director St. Croix stated that before going to the voters, this matter must go before the Board and they have to agree to this point as well. He stated that whenever changes are made, sometimes there are unintended consequences and allowing super-majorities would permit the Commission to make the necessary changes without going to the voters.

Chairperson Studley asked the deadline for submitting this item for the November ballot. Mr. St. Croix estimated that the deadline was in June 2011.

Commissioner Hur stated that he saw the benefit of this authority. Chairperson Studley stated that the voters should decide what should come to them. Mr. St. Croix stated that the process of submitting items for the ballot is difficult and once the Commission sends an item for the ballot, the Commission must remain silent on the item. When there are proposed amendments with super-majorities, the Commission is permitted to comment and provide advice. Commissioner Hayon stated that many voters may feel overwhelmed with the number of ballot measures on the ballot, especially measures regarding technical changes with legalese.

**Motion 11-01-10-1 (Hur/Hayon): Moved, seconded and passed (3-1; Hansen dissent) that the Commission adopt decision point 2.**

Public Comment:

Mr. Pilpel welcomed the new Commissioners. He stated that the changes would be more streamlined and are consistent with other local laws.

Decision Point 3b

Deputy Director Ng stated that Commissioner Hansen expressed interest in returning to the original definition of "candidate" and staff agreed to leave the definition basically unchanged.

**Motion 11-01-10-2 (Hayon/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 3b.**

Public Comment:

Mr. Pilpel asked about the definition of "economic consideration" at the top of page 4 in the draft amendments, but then realized the question was for the next decision point.

Decision Point 3c

Commissioner Hansen expressed concerns regarding the last line of additional language on page 4, "reimburse vendors." Ms. Ng stated that staff recommended the language to match language from a 2001 Ethics Commission advice letter regarding economic consideration. She stated that consultants should not be deemed to have earned that money. Commissioner Hansen stated that the Commission would be assuming the reimbursement occurs and that the vendor pays.

Chairperson Studley asked the purpose of this definition. Ms. Ng stated that this definition would be used in defining the minimum thresholds for a consultant, as well as calculating what the consultant earns. Commissioner Hansen stated that she had concerns regarding hidden costs and the timing of reporting. Ms. Ng stated that the client (campaign committee/candidate) would report payments made on its campaign statements.

Commissioner Hur asked about lines 16-19 on page 4, which were proposed to be removed. Ms. Ng stated that the ordinance was too broad and that staff did not see why these exceptions should still exist. The Commissioners discussed possible scenarios of the proposed stricken language.

**Motion 11-01-10-3 (Hansen): Moved and not seconded that the Commission approve only the proposed changes to the definition of "vendor" in section 1.510(i).**

Commissioner Hur stated that he was not comfortable changing the definition of "vendor," as there could be unintended consequences.

Public Comment:

Mr. Pilpel stated that regarding "vendor," the relationship between candidates, committees, consultants, and vendors was a complex arrangement. He stated that the definition may exclude someone who would not otherwise qualify as a consultant. He stated that just because there is a vendor and economic consideration does not make the vendor subject to the Ordinance. He stated that "services" are defined elsewhere (in 1.510(b)-(d)) and it all goes together.

Mr. St. Croix stated that the intent was not to have reimbursements considered as income to the consultant. He suggested taking "reimbursements" from line 2, page 4, as well as the last sentence of the definition of "economic consideration." Commissioner Hayon asked why attorneys, accountants, and pollsters were originally excluded from the Ordinance. Mr. St. Croix stated that he did not know why.

Mr. Pilpel stated that some vendors, such as printers, are reluctant to work with campaigns because the campaign may not pay or take a while to pay. He stated that these vendors also do not want the cost becoming a contribution, if the campaign does not pay. He stated that the vendors work with consultants because they know they will be paid. He stated that vendors seek business and are eager to be paid for their work.

Charles Marsteller stated that Mike Housch or Larry Bush may be able to explain the reasons behind the inclusion or exclusion of certain groups in the Ordinance.

Mr. Pilpel stated that if someone is a professional campaign manager and that person is also an attorney, then that person would qualify under the Ordinance because that person is not providing "only legal services." He suggested deleting lines 16-19 from "vendor."

Mr. St. Croix suggested changing the language of the second sentence in "economic consideration" to the following: "Economic consideration does not include reimbursements made to consultants for payments made to vendors." Commissioner Hur suggested deleting the second sentence, if there were other ways to limit the payments, such as a time limit. Mr. St. Croix agreed with removing the second sentence. Ms. Ng suggested adopting regulations to clarify "reimbursements." Commissioner Hansen suggested adding a time frame for the reimbursements. Mr. St. Croix suggested adding "made on a timely basis."

Mr. Marsteller stated that a common issue is where a mail house will advance postage to a committee and not bill the consultant and/or campaign committee. He stated that would be an accrued debt, but the Commission now has an accrued debt limit.

DCA Shen reminded the Commissioners that the definition of "economic consideration" is important in order to determine whether a consultant qualifies under the Ordinance. He expressed concerns including words like "timely" or "reasonable."

**Motion 11-01-10-4 (Hur/Hansen): Moved and seconded that the Commission adopt decision point 3c, except that the phrase "reimbursements for expenses" be stricken from the first sentence and the second sentence be stricken in its entirety, and that the Commission adopt regulations after further research to clarify this issue.**

Public Comment:

Mr. Pilpel approved of the changes, but stated that the language is duplicative and unnecessary. Mr. Marsteller stated that staff may have a difficult task regarding the timeliness question.

The Commissioners discussed the possibility of kickbacks or commissions from vendors to consultants.

**Motion 11-01-10-5 (Hur/Hansen): Moved, seconded and passed (4-0) that the Commission adopt decision point 3c, except to strike the phrase "reimbursement for expenses" from line 2, page 4, and strike the additional proposed language and the second sentence of the definition of "economic consideration"; in addition, the Commission proposes that staff research the issue of providing anything else of value for the potential for reimbursements that are not made in a long period of time and draft regulations.**

Public Comment:

None.

Mr. Marsteller suggested adding examples into the campaign consultant manual in order to clarify this issue.

Decision Point 7

Commissioner Hur stated that section 1.525(b) – evasion of obligations – seemed vague and was too broad. Ms. Ng stated that the language mirrored that which is in the Lobbyist Ordinance. Commissioner Hansen noted that the decision point incorrectly referenced lines 12-18 on page 11 of the draft amendments, when it actually referenced lines 3-9 on page 12 of the draft amendments.

**Motion 11-01-10-6 (Hansen/Hayon): Moved, seconded and passed (3-1; Hur dissent) that the Commission adopt decision point 7.**

Public Comment:

Mr. Marsteller stated that the FPPC may have experience with the evasion question.

Decision Point 10

Commissioner Hur stated that he did not see “preponderance of the evidence” in the draft amendments. Staff agreed to add the language “on the basis of a preponderance of the evidence” in line 15, page 14 where “on the basis of substantial evidence” used to be.

The Commissioners then discussed the proposal to delete language in section 1.540(c) allowing the Commission to cancel the registration of any campaign consultant who has violated the registration or reporting requirements of the Ordinance for up to one year. Ms. Ng stated that the administrative penalty mirrors that in CFRO and that the monetary penalty would be sufficient. She also stated that it had never been used. Commissioner Hur expressed concerns that there was no limitation on the Commission to cancel a consultant’s registration. Mr. St. Croix suggested adopting regulations to limit the Commission’s ability to do so.

Mr. Pilpel stated that the language in lines 11-14 on page 15 was strange.

Mr. Marsteller stated that the cancellation of someone’s registration was a severe sanction.

**Motion 11-01-10-7 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 10, except for the fourth bullet point from staff’s memorandum.**

Public Comment:

None.

**Motion 11-01-10-8 (Hur/Hansen): Moved, seconded and passed (4-0) that Commission staff consider regulations that would provide guidance when that power would be used by the Commission.**

Public Comment:

None.

Decision Point 17

Commissioner Hur clarified that the decision point would take everything discussed at this meeting and during December’s meeting into account.

**Motion 11-01-10-9 (Hayon/Hur): Moved, seconded and passed (4-0) that the Commission adopt decision point 17.**

Public Comment:

Mr. Pilpel stated that line 12 on page 5 may need to be changed; he suggested “employee.” Chairperson Studley stated that line 14 on page 5 was being changed. Mr. St. Croix stated that

would be taken under consideration. Mr. Pilpel stated that subsections 7 and 8 of section 1.515(b) were unlikely. He also encouraged the Commission to add the requirement for a consultant to disclose whether s/he or any employee serves as an officer or director of a general purpose recipient committee and, if so, to require the consultant to list the name of the organization. He stated that he suggested that the Commission require disclosure and not prohibit it.

**V. Possible retention of the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco.**

Executive Director St. Croix stated that staff would like the Commission's approval on this arrangement, so that staff would have someone if any questions are raised regarding the mayoral race. DCA Shen clarified the nature of the firewall within the Office of the City Attorney. He stated that the City Attorney's office would handle general questions regarding public financing and campaign finance, without the assistance of Dennis Herrera. He stated that the City Attorney's office would not be involved in specific questions regarding the mayoral race.

**Motion 11-01-10-10 (Hayon/Hansen): Moved, seconded and passed (4-0) that the Commission retain the Oakland City Attorney's Office as legal counsel to advise the Ethics Commission on matters that directly involve the election or campaign in the November 2011 municipal election for Mayor of the City and County of San Francisco.**

Public Comment:

Mr. Pilpel stated that Mr. Morodomi previously worked for the FPPC and asked whether the written agreement was a public document.

DCA Shen stated that there may not be a need for a written agreement.

**VI. Closed session.**

**Motion 11-01-10-11 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission enter into closed session.**

Public Comment:

Mr. Marsteller stated that he had a comment, but missed the earlier item for general public comment. He stated that there may be coordination for ranked-choice voting. He stated that there may be deployment of public financing resources to ranked-choice tickets and coordination between committees. He suggested that the Commission hold interested persons' meetings about it.

Mr. Pilpel stated that he had questions regarding the budget, but then stated that it was not on the agenda. He then asked about the item to be discussed during closed session. DCA Shen stated that there was a constitutional challenge to the public financing program.

[Entered CLOSED SESSION at 8:13 PM.]

[Returned FROM CLOSED SESSION at 8:27 PM.]

**VII. Discussion and vote regarding closed session action and deliberations.**

**Motion 11-01-10-12 (Hur/Hansen): Moved, seconded and passed (4-0) that the Commission finds that it is in the best interests of the public not to disclose its closed session deliberations re: existing legislation.**

Public Comment:

None.

**VIII. Minutes of the Commission's regular meeting of December 13, 2010.**

**Motion 11-01-10-13 (Hansen/Hur): Moved, seconded and passed (4-0) that the Commission adopt the minutes of the Commission's regular meeting of December 13, 2010, without discussion.**

Public Comment:

None.

**IX. Executive Director's Report.**

Executive Director St. Croix stated that February's meeting will be on Valentine's Day. He stated that there had been a probable cause hearing scheduled, but that has been continued. He stated that another probable cause hearing is scheduled for February and is expected to take the majority of the meeting time. He stated that the Commission will need to consider the annual budget at the February meeting. He stated that the Commission was required to submit \$53,000 in savings from this year's budget and that was approved. He stated that there have already been many questions regarding public financing for the Mayoral race and there is a training scheduled for the end of January 2011.

Mr. St. Croix then stated that this meeting may be the last meeting that Commissioner Hansen would attend as a Commissioner, but that she may remain on the Commission in February and March. He stated that he wanted to thank her for her tenure. Chairperson Studley stated that she appreciated Commissioner Hansen's tenacity and candor and her work on the Commission. Commissioner Hur stated that he appreciates hearing her comments and views and agrees with Chairperson Studley and the Executive Director.

Commissioner Hansen stated that at times it was a struggle, but that she has had a phenomenal six years. She stated that she was appreciative to have been able to serve the City in this way. She stated that she hopes her replacement would work well with the other Commissioners and that s/he would continue in the same vein. She stated that she hopes that the Commission sets the bar high enough so that other cities would follow and thanked the Commissioners for their service.

**X. Items for future meetings.**

Public Comment:

None.

**XI. Public comment on matters appearing or not appearing on the agenda that are within the jurisdiction of the Ethics Commission.**

None.

**XII. Adjournment.**

**Motion 11-01-10-14 (Hayon/Hansen): Moved, seconded and passed (4-0) that the Commission adjourn.**

Public Comment:

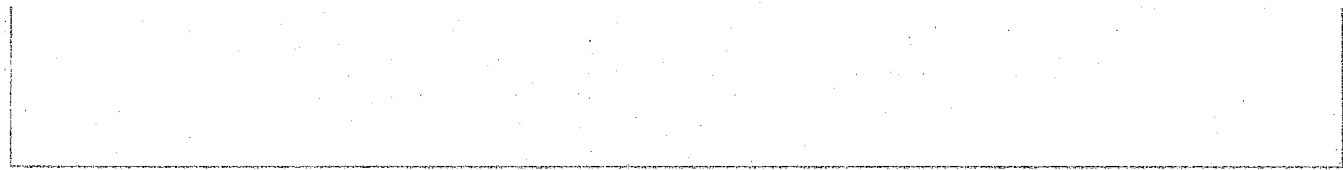
None.

Meeting adjourned at 8:35 PM.

Respectfully submitted,

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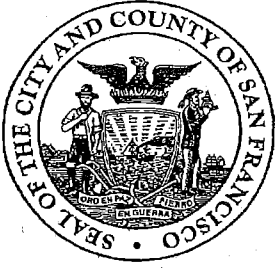
Catherine Argumedo





**This summary statement was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by, the Ethics Commission.**

**The placement of this summary, as an attachment to the minutes, violates the clear wording of the Sunshine Ordinance. The Ethics Commission has made specious arguments to justify this variance from the law. The Brown act clearly states, "...any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest." It goes on to say, "...that prohibiting critical comments was a form of viewpoint discrimination." Further, "such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue." The placement of public comment summaries, in variance with the law, is intended to relegate those comments to a position of secondary validity. In reality, it serves no other purpose. Does anyone believe that a member of the commission would, objecting to how their comments were reported in the minutes, be denied the opportunity to correct the record?**



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR  
CHAIRPERSON

JAMIENNE S. STUDLEY  
VICE-CHAIRPERSON

BEVERLY HAYON  
COMMISSIONER

DOROTHY S. LIU  
COMMISSIONER

CHARLES L. WARD  
COMMISSIONER

JOHN ST. CROIX  
EXECUTIVE DIRECTOR

## Via Electronic Mail

November 22, 2011

Hope Johnson, Chair  
Sunshine Ordinance Task Force  
1 Dr. Carlton G. Goodlett Place, Room 244  
San Francisco, CA 94102

Dear Chairperson Johnson:

On November 29, 2011, the Sunshine Ordinance Task Force ("Task Force") is scheduled to hear case number 11088, *Ray Hartz v. Ethics Commission*. Mr. Hartz filed a complaint on October 19, 2011 alleging that the minutes of the January 10, 2011 Ethics Commission meeting violated section 67.16 of the Sunshine Ordinance. Specifically, he claimed that the "Ethics Commission has violated the above section by failing to include a 150 word summary provided, relating to public comment, in the body of the minutes [in accordance with] previous SOTF determinations #10054 (as revised) and #11054."

For the reasons stated below, no representative from the Ethics Commission will attend the Task Force meeting on November 29, 2011. First and foremost, the Ethics Commission contests Task Force's jurisdiction to hear this matter. Second, the complainant alleges that the Commission failed to include a summary "in accordance with previous SOTF determinations"; however, the Commission was not notified of either of these Orders prior to its February 14, 2011 meeting during which it approved the Commission's January 2011 minutes. Third, the revision of the Order in case #10054 was improper. Fourth, the Commission had previously made a determination regarding the issue presented in Mr. Hartz's present complaint and concluded that attaching a 150-word written statement to the minutes is proper. Finally, the Sunshine Ordinance provides no mechanism to compel a public official to attend a hearing before the Task Force regarding alleged public meeting violations.

*a. The Task Force is not authorized to hold hearings or make findings in reference to alleged public meeting violations.*

Article II of the Sunshine Ordinance refers to "Public Access to Meetings," but there are no references to the Task Force within Article II. There is no language within Article II that authorizes the Task Force to hear or decide complaints alleging violations of the Ordinance.

Section 67.21(e) is the only section that provides the Task Force with the authority to make a determination on violations of the Sunshine Ordinance; that section refers entirely to determinations regarding public records. First, section 67.21(e) outlines the process the Task Force follows in response to a petition for a determination whether a record requested is public. Second, section 67.21(e) allows the Task Force to conduct a public hearing concerning the records request denial, if requested by a petition for a determination of whether a record is public. Section 67.21(e) specifically provides that the Task Force do either of the following: 1)

make a determination of whether a record requested is public, or 2) conduct a public hearing concerning the records request denial. Nothing in this section permits the Task Force to hear complaints alleging public meeting violations. There is also nothing in this section that authorizes the Task Force to issue an Order of Determination regarding an alleged public meeting violation.

b. *The Ethics Commission was not provided with any notice of the Task Force's Orders re: case numbers 10054 and 11054.*

In his complaint, Mr. Hartz claimed that the "Ethics Commission has violated [section 67.16] by failing to include a 150 word summary provided, relating to public comment, in the body of the minutes IAW [in accordance with] SOTF determinations #10054 (as revised) and #11054."

The Ethics Commission was not notified of either Order prior to the Commission's approval of the minutes at its February 14, 2011 meeting.

Order #10054 was issued on January 25, 2011 and dated February 7, 2011. The Commission was not notified of this Order until August 15, 2011 – six months *after* the Commission had already approved the January 2011 meeting minutes. Order #11054 was issued on August 23, 2011 and dated September 3, 2011. As of the date of this letter, the Commission has not received notification of this Order.

Therefore, as the Commission had received no notice of these Orders by the time it held its February 2011 meeting, it is impossible for the Commission to have violated section 67.16 by failing to include a summary "in accordance with" the Task Force's Orders Mr. Hartz referenced in his complaint.

c. *The revision of the Order in case #10054 was improper.*

According to its September 13, 2011 meeting agenda, the Compliance and Amendments Committee ("CAC") reconsidered the Task Force's January 25, 2011 Order regarding this case. The Ethics Commission questions the propriety of this reconsideration. It appears that the Task Force failed to follow its own procedures, as outlined in its "Public Complaint Procedure." (See ATTACHMENT A.) The Task Force also failed to follow the advice of its City Attorney regarding the procedures for either reconsideration or a correction of an Order. In addition, the CAC violated both the Brown Act and the Sunshine Ordinance by taking action on an item that did not appear on the posted agenda. (See ATTACHMENT B.)

i. *The CAC did not follow the Task Force's procedures and improperly reconsidered the Order.*

Section E of the Task Force's "Public Complaint Procedure" outlines the approved procedures regarding reconsideration of Task Force findings. Section E states:

1. Within 10 days of receipt of the Order of Determination, either the Complainant or respondent may petition the SOTF for a reconsideration only if information exists that was not available at the time of the hearing and the petitioning party must present an offer of proof as to the new information.
2. The Task Force shall consider the petition at its next scheduled meeting. If a petition for reconsideration is granted, a new hearing on the complaint shall be scheduled at the next SOTF meeting.

a. *Neither the complainant nor the respondent petitioned the Task Force for reconsideration of the Order.*

Mr. Hartz never petitioned the Task Force for reconsideration of its Order, and one cannot conclude that his February 17, 2011 e-mail was a "petition for reconsideration." The e-mail subject was "Fw: Disingenuous or Dishonest?" The e-mail consisted of four paragraphs and only one referenced this case, although it did not reference the case number. Mr. Hartz wrote:

"I believe that your actions in the case of the Library Commission are questionable at best! After I made the argument that the Sunshine Ordinance requires the 150 word statements be placed "in the minutes," won that argument by a unanimous vote, was promised a determination, and when all was said and done you simply negate the whole matter by stating that SOTF had decided that the statements DID NOT HAVE TO BE "in the minutes."

Nowhere in that paragraph does Mr. Hartz: a) request that the Task Force reconsider the Order or its findings, b) state that information exists that was not available at the time of the hearing, or c) present an offer of proof as to the new information.

In fact, on January 25, 2011, the Task Force found that the Library Commission violated section 67.16 for attaching the written statement Mr. Hartz submitted as an addendum to its minutes. The Order, as written, reflected that finding.

- b. Neither the complainant nor the respondent presented information, within 10 days of receipt of the Order, that was not available at the time of the January 25, 2011 hearing.*

According to the Task Force's "Public Complaint Procedure," a complainant or respondent may only petition the Task Force for reconsideration *only if* information exists that was not available at the time of the hearing and the petitioning party must present an offer of proof as to the new information "within 10 days of receipt of the Order." The "Public Complaint Procedure" does not outline procedures for the Task Force to reconsider an Order on its own initiative.

As stated above, Mr. Hartz did not petition the Task Force for reconsideration. In addition, he did not present any new information in his February 2011 e-mail that existed and was not available at the time of the Task Force hearing on January 25, 2011. During the September 13, 2011 CAC meeting, Mr. Hartz also did not present any new information that existed and was not available during the January 25, 2011 meeting.

During the discussion of this item at the September 13, 2011 CAC meeting, Chair Johnson stated that she had introduced the item. She also stated that "this is not the same as... We are not reconsidering the whole thing." Chair Johnson stated that Mr. Hartz had "objected" to the Order in his e-mail. The item for "reconsideration" was placed on the CAC meeting agenda seven months after the Order was issued, although no one from the Task Force ever acknowledged Mr. Hartz's e-mail as a "petition for reconsideration." Chair Johnson stated that "it is not really a reconsideration [and that it] would not change the outcome of our findings." She stated that she introduced the item because the Library Commission had referenced the Order and that it made "us look wishy washy." CAC members stated that Chair Knee's statements during the January 25, 2011 Task Force meeting were erroneous.

The agenda packet for the September 13, 2011 CAC included eight items:

1. Order of Determination, issued January 25, 2011
2. Task Force's Public Complaint Procedure
3. Mr. Hartz's February 17, 2011 e-mail
4. Task Force's August 15, 2011 referral letter

5. Partial transcript of January 25, 2011 Task Force meeting
6. Minutes of the October 11, 2006 CAC meeting
7. Portions of the 2006-07 edition of the *Good Government Guide*
8. Portions of the 2007-08 edition of the *Good Government Guide*

Chair Johnson referenced the partial transcript of then Chair Knee's statements that he made during the January 25, 2011 Task Force meeting. (See ATTACHMENT C, page 12.) According to the transcript, Chair Knee stated that he thought "the Task Force found it acceptable if the minutes...if the actual comment or 150-word summary of the comment submitted by a member of the public was appended." After Member Knee made these comments, no other member of the Task Force challenged the veracity of his statements or suggested that it was erroneous.

Apparently, as no members of the Task Force objected to his statement, Chair Knee then included the following sentence in the Task Force's Order for this case under the "Findings of Fact and Conclusions of Law" section: "It also noted that the Task Force had found in a previous ruling that placing the 150-word statement as an addendum was acceptable if it was mentioned in the body of the minutes." Both he and Member Snyder signed the Order.

During the September 13, 2011 CAC meeting, Chair Johnson noted that she had reviewed all Task Force Orders from 2000 and she found no reference to a previous ruling regarding a 150-word statement. She claimed that the only reference to the written statement she had found were statements made by a member of the public during the October 11, 2006 CAC meeting.

However, at the time of the January 2011 meeting, Chair Knee's statement was accurate. The Task Force and CAC have been considering amendments to the Sunshine Ordinance over the course of many years. At a discussion regarding possible amendments to the Ordinance during the July 24, 2007 Task Force meeting, Member Cauthen referred to the practice of attaching written statements to meeting minutes. (See ATTACHMENT D.) As of June 10, 2008, the draft amendments to section 67.16 included provisions that "any person may submit written comments that shall, if no more than 150 words, be included in the body of the minutes or attached to the minutes and noted in the item." This same language was approved by the CAC on March 3, 2010 and was accepted as part of the draft amendments through February 2011, until Chair Knee proposed a change during the March 17, 2011 special Task Force meeting. (See ATTACHMENTS E - M.) Proposed amendments to section 67.16 were still under consideration during the May 5, 2011 special Task Force meeting.

Therefore, as of the January 25, 2011 meeting, the approved proposed language for section 67.16 was that "any person may submit written comments that shall, if no more than 150 words, be included in the body of the minutes or attached to the minutes and noted in the item." When the Order was issued in January 2011, both the Task Force and CAC had repeatedly reviewed proposed amendments and approved the process that submitted written statements could be attached to the minutes.

At the September 13, 2011 CAC meeting, Chair Johnson did not present information that existed and was not available at the time of the January 2011 hearing, as required for reconsideration of Task Force findings. The Task Force may have since reconsidered its position on section 67.16, but there was no new information presented that was not available at the time of the January 25, 2011 hearing. The Task Force does not appear to change its position until the March 17, 2011 special meeting, which is well past the 10-day deadline to request reconsideration of an Order, past the date of Mr. Hartz's February 17, 2011 e-mail, and past the date that the Ethics Commission approved its January 2011 minutes.

The fact that the Task Force changed its position on section 67.16 months after the Order was issued is not a valid reason for reconsideration. The Procedures clearly state that the complainant or respondent

may petition "only if information exists that was not available at the time of the hearing." Therefore, the Commission contends that the Order regarding this complaint was improperly reconsidered.

*c. The Order was reconsidered before the CAC and not the full Task Force.*

According to the "Public Complaint Procedure," the full Task Force, *not* a committee of the Task Force, is to consider a petition for reconsideration at its next scheduled meeting.

According to its agenda, the CAC reconsidered this Order at its September 13, 2011 meeting. According to Task Force's by-laws, the CAC "shall monitor compliance with the Orders of Determination adopted by the Task Force; shall recommend to the Task Force amendments to the Sunshine Ordinance regarding enforcement of the Orders of Determination; and shall consider and recommend any other additions, amendments, and changes to the Sunshine Ordinance as provided by members of the Task Force and from the general public." The by-laws do not permit the CAC to reconsider or change content of an Order.

*d. A new hearing regarding case #10054 was not scheduled at the next Task Force meeting.*

If a petition for reconsideration is granted, a new hearing on the complaint is required to be scheduled for the next Task Force meeting. The Task Force never granted a petition for reconsideration of this Order. If the action it took during the September 27, 2011 meeting was a "reconsideration" of the Order, then Task Force procedures required that a new hearing on the complaint be scheduled at the next meeting, which was October 25, 2011. The Task Force never scheduled a new hearing regarding this matter.

Therefore, for these reasons, the Ethics Commission concludes that the "reconsideration" of this Order was improper.

*ii. The revision to this Order was improper because a) the Task Force did not follow its own procedures regarding making a correction to an Order or b) the statements made by Member Knee during the January 25, 2011 meeting were correct.*

On August 17, 2011, Chair Johnson e-mailed Deputy City Attorney Threet regarding an "incorrect statement" in the Order. (See ATTACHMENT N.) Chair Johnson included the complainant on the e-mail, but not the respondent. Staff has been unable to find any record that the Chair included the Respondent on any communications regarding the possible reconsideration or amendment of the Order. Respondent received notification from the Task Force Administrator on Friday, September 9, 2011 that the Order would be reconsidered during the Tuesday, September 13, 2011 CAC meeting. (See ATTACHMENT O.)

Chair Johnson asked DCA Threet whether the Order could be placed on the agenda for amendment if she were able to verify that no such ruling occurred. DCA Threet provided a thorough response, explaining the procedures for both reconsideration and correction of a clerical error on an Order. At no time in his response did he mention that the CAC had the authority to act. (See ATTACHMENT P.)

DCA Threet explained that "if there actually was no discussion during the Task Force meeting that the Task Force had previously allowed inclusion as an addendum, then...amending the OD (Order) would be allowed and advisable." He explained that it would not be a reconsideration, but rather a correction of a clerical error that should be agendized and voted on by the Task Force. In this case, a statement was made during the January 25, 2011 meeting that the Task Force had previously allowed inclusion as an addendum.

Most importantly, DCA Threet advised the Chair that "if that statement *was* made during the Task Force meeting when the OD was issued, then the OD may accurately reflect the decision process of the Task Force. Under those circumstances, amending the OD would not be allowed or advisable on the Task Force's own motion." As stated above, Member Knee stated during the January 25, 2011 meeting that "the Task Force found it acceptable if the minutes...if the actual comment or 150-word summary of the comment submitted by a member of the public was appended." At the time the Order was issued, the approved proposed amendments to section 67.16 permitted the summary to be attached to the minutes. Therefore, as the statement *was* made during the January 25, 2011 meeting and the statement was accurate, Chair Johnson failed to follow DCA Threet's advice not to amend the Order.

DCA Threet also explained that had the Task Force been incorrect about whether it had made a previous ruling, as noted in the second sentence of the "Findings of Fact and Conclusions of Law" section of the Order, then either the complainant or respondent "could have availed themselves of a petition for reconsideration under Section E of the Public Complaint Procedures." He also stated that "this procedure is limited to the 10 days following an OD, however, so it is not available to the parties in this case." In a later e-mail to Chair Johnson, DCA Threet stated that Mr. Hartz could have petitioned the Task Force and "did not do so." He also stated that "objecting to an OD is not the same as petitioning for reconsideration." (See ATTACHMENT Q.)

For these reasons, the Ethics Commission contends that the revision to Order #10054 was improper.

*iii. The CAC violated the Brown Act and Sunshine Ordinance.*

The agenda for the September 13, 2011 CAC meeting listed the following item on its agenda: "10054 Reconsideration of the January 25, 2011, Order of Determination of Ray Hartz v Library Commission. (discussion and possible action item) (attachment)(15 min)." However, the CAC does not have the authority to reconsider this Task Force Order. In addition, neither the complainant nor the respondent petitioned the Task Force for reconsideration. Ultimately, the CAC recommended that a sentence be removed from the January 25, 2011 Order. This recommendation was not listed on its September 13, 2011 agenda.

Section 54954.2(a)(2) of the California Government Code states that "[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3..."

Section 67.7(d) of the Sunshine Ordinance states that "[n]o 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."

In this case, the CAC took action on an item that was not listed on its agenda. After introducing the item, Chair Johnson stated that "it is not really a reconsideration [and that it] would not change the outcome of our findings." She also stated that she had advised that the parties be notified of the discussion, but that they were not required to attend the meeting. After a discussion, she and the other CAC members agreed to recommend a correction to the Order.

According to the draft minutes of the September 13, 2011 CAC meeting available on the Task Force's website, the final motion on the item was "Member Johnson, seconded by Member Wolfe motioned to forward the matter to the full Task Force." However, according to the recording, the motion did not forward case #10054 to the Task Force for reconsideration. The CAC voted to recommend that the Task Force correct the Order by striking a sentence and to prepare a notice that it was incorrect.

Therefore, the actions taken during the September 13, 2011 CAC meeting were improper. The Task Force's action at its September 27, 2011 meeting on the CAC's improper recommendation was also improper.

- d. *The Ethics Commission considered the same issue in case number 10054 and concluded there was no violation.*

On August 15, 2011, case #10054 was referred from the Task Force to the Ethics Commission. The matter was presented for the Commission's consideration for the September 12, 2011 meeting. Staff's recommendation was submitted to the Ethics Commission for consideration to be calendared at the Regular Meeting of the San Francisco Ethics Commission on September 12, 2011. The matter was not calendared and staff's recommendation was thus accepted.

Section 67.16 of the Sunshine Ordinance requires boards and commissions to record minutes for each regular and special meeting. It also states that "[a]ny person speaking during a public comment period may supply a brief written summary of their comments which shall, if no more than 150 words, be included in the minutes." The Office of the City Attorney has published an overview of the laws governing the conduct of public officials in its *Good Government Guide*. In this guide, the Office of the City Attorney has advised policy bodies that, because the written statement is not part of the official minutes adopted by the body, the statement may be included as an attachment to the minutes. (See SF *Good Govt. Guide*, Part 3, §IV(G)(2)(b), p. 133 – 134 (2011).) (See ATTACHMENT R.)

Mr. Hartz's comments were summarized in the body of the minutes as required by the Sunshine Ordinance. The Library Commission included Mr. Hartz's submitted written statement in the minutes as an attachment. The Library Commission followed specific advice from the Office of the City Attorney, which is consistently given to all City departments. (See ATTACHMENT S.) Mr. Hartz stated that the *Good Government Guide* is not the law and is not a substitute for the requirements of the Sunshine Ordinance. However, City departments all rely in good faith on the advice of the City Attorney to ensure that they accurately adhere to the requirements of any law. Even the Task Force's website includes a link to the *Guide* under its "Laws, Rules, and Regulations" section.

Mr. Hartz has made the same allegation against the Ethics Commission in the present complaint. As the Commission has previously determined that the same practice by a different City agency was proper, the Commission again contends that the attachment of his statement was proper for the January 2011 minutes.

- e. *The Ethics Commission has amended its policy/practice regarding its approved minutes.*

Finally, prior to being notified of this complaint, the Ethics Commission began to review and amend its policy regarding its meeting minutes. Mr. Hartz attended the November 14, 2011 Commission meeting. During public comment, he informed the Commission that if he were to print the minutes off the website as they were posted, his written statement would not be included in the print-out.

According to the Commission's previous practice regarding the posting of approved minutes, a link to Mr. Hartz's 150-word summary appeared in blue and was created in the specific agenda item where Mr.



Hartz spoke during the January 10, 2011 meeting. However, an extra step of clicking on the link was necessary in order to either view or print this summary. As his written statement is included as part of the minutes, staff agreed that the posting of the approved minutes on the Commission's website should be modified.

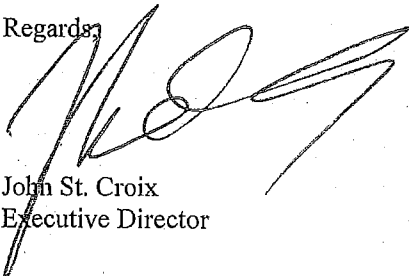
Therefore, staff has amended its policy regarding the posting of the minutes. Staff will now ensure that all written statements submitted in accordance with section 67.16 will be included when someone views or prints the minutes off the Commission's website, without any extra steps. Staff has already made the necessary changes to the January 2011 minutes and is endeavoring to ensure the same for all past minutes. (See ATTACHMENT T.)

*f. No one from the Ethics Commission will be present at the November 29, 2011 meeting.*

The Ethics Commission has determined that section 67.21(e) only provides the mechanism to compel a custodian of records to appear at a hearing before the Task Force concerning a records request denial. Mr. Hartz's complaint alleged a public meeting violation, not a public records denial. The Sunshine Ordinance provides no mechanism to compel a public official to appear before the Task Force regarding alleged public meeting violations. Therefore, no representative from the Ethics Commission may be compelled to attend the Task Force meeting on November 29, 2011.

In conclusion, the Ethics Commission maintains that it properly followed the law regarding its January 11, 2011 meeting minutes. The Commission will continue to advise other agencies and departments that the practice of attaching submitted written statements to the minutes, rather than including text within the body of the minutes, is acceptable and does not violate section 67.16 of the Ordinance.

Regards,



John St. Croix  
Executive Director

Enclosures

Cc: Ray Hartz, Complainant

