

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. 415) 554-7854
TDD/TTY No. (415) 554-5227

May 17, 2012

Dennis Herrera, San Francisco City Attorney
Office of the City Attorney
San Francisco City Hall
1 Dr. Carlton B. Goodlett Place, Room 234
San Francisco, CA 94102

**Re: Public Comment Summaries in Minutes (Sunshine Ordinance Section 67.16)
(Sunshine Ordinance Complaint No. 10054, Hartz v. Library Commission)**

Dear Mr. Herrera,

Please be advised that the Sunshine Ordinance Task Force ("Task Force") disagrees with the Office of the City Attorney's interpretation of the requirements for inclusion of public comment summaries in meeting minutes pursuant to Sunshine Ordinance Section 67.16. The Task Force respectfully requests your office reconsider its position and advice on this matter.

Sunshine Ordinance Section 67.16 provides that "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." The City Attorney Good Government Guide summarizes your office's position and advice on compliance with this provision:

"The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code § 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment."

After careful deliberations of this issue over the past year, the Task Force does not find justification in the Sunshine Ordinance for your conclusions that the summaries may be attached to the minutes rather than included in the minutes or that they are not part of the official minutes. Several sections of the Sunshine Ordinance demonstrate its intent to require the application of legal interpretations that result in greater public access to government (see, for example, Sections 67.5 and 67.36). Both of your conclusions do not follow this intent, and result in less open government.

<http://www.sfgov.org/sunshine/>

Based on the purpose of the Sunshine Ordinance to maximize public access to public information and public meetings and on evidence presented at multiple Task Force hearings, the Task Force finds the interpretation most commonly understood by members of the public and those required to follow the Sunshine Ordinance, resulting in the least confusion and greater open government, is the plain language of the law. 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 be inclusive of the meaning “attached to the minutes,” and finds no justification for authorizing an attachment where no reference to an attachment is made.

The Task Force further finds that an addendum is an attachment to a document, not part of the main document itself, and, accordingly, an addendum is not “in the minutes” as required under the Ordinance. The Task Force finds that the Ordinance states in simple, plain language that the summary of 150 words or less must be “in the minutes” and that requirement is not satisfied by attaching the statement as an addendum at the end of the minutes.

Please take note that placing the public comment summaries in the body of the minutes prevents public officials from abridging unwanted or critical public comment, a requirement under Sunshine Ordinance 67.15(d). Members of the public have brought to the attention of the Task Force that some commissions place the summaries as attachments without directing readers to the item the summary has been submitted in reference to, nearly ensuring anyone reading the minutes will likely overlook public comment on an item or read only the summary of the comment as the commission prefers it to be interpreted (see, for example, Sunshine Complaint No. 11071).

The Task Force notes other commissions have placed a disclaimer on the attached summaries that the summaries are not subject to approval or verification of accuracy by the commission (see, for example, Sunshine Complaint No. 11088). This may be perceived as placing an unwarranted negative bias on the summaries, and is a further erosion of the public’s rights guaranteed by the Sunshine Ordinance that is condoned by your interpretation of Section 67.16. In addition, these disclaimers may constitute a violation of the ordinance as Section 67.16 does require commissions to include an accurate summary of public comments in meeting minutes.

Based on the foregoing and the Task Force’s extensive experience with Sunshine-related hearings, the Task Force requests your office reconsider its position, and coordinate with members of the public and the Task Force to ensure the greatest public access and participation in government.

Thank you for your attention to this matter. Please contact the Sunshine Ordinance Task Force Administrator at sotf@sfgov.org or (415) 554-7724 with any questions or concerns.



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant
Jewelle Gomez, President, Library Commission, Respondent
Sue Blackman, Secretary, Library Commission, Respondent
Luis Herrera, San Francisco City Librarian
Jerry Threet, Deputy City Attorney