

**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**

ORDER OF DETERMINATION

March 12, 2012

DATE THE DECISION ISSUED

March 7, 2012

RAY HARTZ, JR. v. LUIS HERRERA, CITY LIBRARIAN (CASE NO. 11098)

FACTS OF THE CASE

Complainant Ray Hartz alleges that San Francisco City Librarian Luis Herrera violated the Sunshine Ordinance by failing to instruct San Francisco Library Commission Secretary Sue Blackman to include Mr. Hartz's public comment summaries of 150 words or less within the body of minutes that were approved by the San Francisco Public Library Commission during meetings held on November 17, 2011 and December 1, 2011.

COMPLAINT FILED

On December 15, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against Mr. Herrera, alleging violation of Sunshine Ordinance Section 67.16.

HEARING ON THE COMPLAINT

On March 7, 2012, Ray Hartz presented his case to the Task Force. Neither respondent Luis Herrera nor an authorized representative appeared at the hearing or provided any other response to Mr. Hartz's complaint.

The Library Commission approved draft minutes for its regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011. Those minutes did not include public comments summaries that were submitted by public speakers in the body of the minutes, but rather included them as attachments to the minutes. Mr. Hartz alleged that, by approving these minutes, the Library Commission disregarded the Task Force's prior findings in Sunshine Complaints 10054 and 11054 that public comment summaries provided by members of the public must be included within the body of the minutes, not as attachments.

Mr. Hartz further stated he filed his complaint against Mr. Herrera rather than the Library Commission because Mr. Herrera is the direct supervisor of Library Commission Secretary Sue Blackman, who prepares the draft minutes. He stated that, as a managerial employee, Mr. Herrera is responsible for ensuring San Francisco Public Library employees comply with the Sunshine Ordinance, including requiring Ms. Blackman to place his public comment

summaries in the minutes. Mr. Hartz alleged that Mr. Herrera is either directing Ms. Blackman to ignore the Task Force's findings or failing to ensure she complies with the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concludes that 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 Task Force continues to interpret the phrase "included in the minutes" by using the plain meaning of the words, and finds that the public comment summaries must be placed within the body of the minutes, not as attachments. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" does not mean "attached to the minutes."

The Task Force further observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints regarding the Sunshine Ordinance's public meeting provisions. Sunshine Ordinance Section 67.30 requires the Task Force to "make referrals to a municipal office with enforcement power under this ordinance . . . whenever it concludes that any person has violated *any provisions of this ordinance*" (emphasis added). As it would be impossible for the Task Force to find a violation of the public meeting provisions of the Sunshine Ordinance without hearing complaints alleging such violations, the Ordinance plainly vests authority in the Task Force to hold such hearings and, based on the process outlined in Sunshine Ordinance Section 67.21(e), to require respondents or authorized representatives to attend such hearings.

DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission minutes and 67.21(e) for failure to appear at the Task Force hearing on the complaint.

Mr. Herrera and the Library Commission shall make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011 within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Costa)

Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson

Noes: 0

Absent: 3 – Cauthen, Wolfe, Chan



Hope Johnson, Chair
Sunshine Ordinance Task Force



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

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

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