

**SUNSHINE ORDINANCE
TASK FORCE**



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ORDER OF DETERMINATION
February 7, 2011

DATE THE DECISION ISSUED
January 25, 2011

RAY HARTZ v LIBRARY COMMISSION (CASE NO. 10054)

FACTS OF THE CASE

Complainant Ray Hartz alleges that the Library Commission (the "Commission" or "Respondent") violated the Sunshine Ordinance by failing to include in the text of the official minutes of its September 16, 2010, meeting his written statement of not more than 150 words. Mr. Hartz alleges that the Commission instead included a summary that did not accurately reflect his testimony. Mr. Hartz's complaint identifies Sunshine Ordinance ("Ordinance") Section 67.16 as having been violated. In his supplemental complaint, Mr. Hartz alleges that the above actions constituted a violation of Section 67.15 of the Ordinance by abridging his public testimony.

COMPLAINT FILED

On October 14, 2010, Mr. Hartz filed a complaint with the Task Force alleging a violation of the Ordinance. On October 20, 2010, Mr. Hartz amended his complaint with supplemental allegations of an additional violation of the Ordinance.

HEARING ON THE COMPLAINT

On January 25, 2011, Mr. Hartz presented his case before the Task Force. Mary Hudson appeared on behalf of the Commission.

Mr. Hartz told the Task Force that the Sunshine Ordinance allows for the inclusion of a 150-or fewer-word summary in the minutes. He said the Commission argues that its practice is supported by the Good Government Guide, which is not the law. He said he has repeatedly appeared before the Commission and have stated what the law requires. Instead, he said, the Commission's practice is to attach it as an addendum and make no mention of it in the body of the minutes. Another problem, he said, is that the Commission puts its own view of what was said in the minutes rather than what was actually said. If he had positive things to say, it would be in the minutes but if he had harsh words, the Commission would limit it or tone it down, he said.

Ms. Hudson of the City Librarian's Office said she was representing Commission Secretary Sue Blackman, who had earlier requested through two emails to the Task Force that the item not be placed on the current agenda because she would be unable to attend as she was on a planned vacation. Ms. Hudson requested that the item be continued to allow for Ms. Blackman's attendance at a future date. Chair Knee denied the request after sensing that members wanted the case heard. She then told Chair Knee that only Ms. Blackman, who is the Commission's lone staff person, was familiar with the complaint. Chair Knee said if that was the case, Commission President Jewelle Gomez should have made an alternate arrangement, including sending one of the seven commissioners.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Judging from the testimony and evidence presented, the Task Force finds the testimony of Mr. Hartz to be persuasive. 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.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that the Commission violated Sunshine Ordinance Section 67.15 by altering Mr. Hartz's statement as it constituted an abridgement of the submission and Section 67.16 for attaching the statement as an addendum and not placing it within the body of the minutes. The Task Force also found Ms. Gomez in violation of Section 67.21(e) for not sending a person knowledgeable in this matter to the hearing. The agency shall make the necessary changes and appear before the Task Force on March 22, 2011.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on January 25, 2011, by the following vote: (Washburn / Chan)
Ayes: Snyder, Manneh, Washburn, Knoebber, Wolfe, Chan, Johnson, Knee
Excused: Cauthen



Richard A. Knee, Chair
Sunshine Ordinance Task Force



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

c: Ray Hartz, Complainant
Sue Blackman, Respondent
Jewel Gomez, Commission President
Jerry Threet, Deputy City Attorney

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

Complaint Procedure

San Francisco Sunshine Ordinance Task Force PUBLIC COMPLAINT PROCEDURE

Consistent with the language and spirit of the San Francisco Sunshine Ordinance (Ordinance) to provide the most open government possible (see City Administrative Code Section (§) 67.1), all inferences and evidence shall be viewed in the light most favorable to the petitioner.

Revised 4/26/2005, Revised as to form 5/22/2007 & 3/25/2008

The Sunshine Ordinance Task Force (SOTF) has an obligation under San Francisco Administrative Code §§67.21 (e), 67.30(c) and 12L.1-10 to respond to public complaints.

A. Inquiries In Person or by Phone

It is the goal of the SOTF to help the public gain access to public records and meetings. The staff of the SOTF will therefore work with members of the public to help achieve such access in order to avoid the need for filing complaints with the SOTF.

1. The Administrator shall discuss the request with the member of the public and attempt, with the assistance of the City Attorney, to mediate the request.
2. If unable to facilitate access to a desired record or to a public meeting, the SOTF staff shall advise the members of the public of his/her right to file a petition with the Supervisor of Records (the City Attorney's Office) and to pursue the SOTF complaint process, and shall send the complainant a packet of information regarding the complaint process.

B. Filing a Complaint with the SOTF

1. A letter or complaint form may be submitted to the SOTF via mail, fax or electronic mail (email), or in person. If a complaint letter is received, the Administrator shall complete a complaint form and send a copy to the complainant for their review and approval. The complaint form shall include a box to indicate if the complainant wants a public hearing before the Task Force or a pre-hearing conference before the Complaint Committee to focus the complaint or to otherwise assist the parties to the complaint. Once filed a copy of the complaint shall be sent to the Chairs of the full Task Force and Complaint Committee, and the SOTF Deputy City Attorney.
2. Upon filing a complaint, the complainant shall be given a condensed checklist of procedural requirements (i.e. complaint process, documentation deadlines, etc.). The responding City department/agency (respondent) shall be sent written notice of the complaint with a checklist of procedures, with a request to respond to the charges in the complaint within 5 business days. The Deputy City Attorney who advises City departments/agencies may assist the respondent in preparing a response to the complaint. (See Addendum)

3. Hearing Schedule:

(a) If the responding City department (respondent), or the SOTF Deputy City Attorney, (a) do not contest jurisdiction, or (b) there is no request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint, a hearing will be scheduled with the Full Task Force.

(b) If the responding City department (respondent), or the SOTF Deputy City Attorney, (a) contest jurisdiction, or (b) there is a request for a pre-hearing conference to focus the complaint or otherwise assist the parties to the complaint a hearing will be scheduled with the Complaint Committee prior to the hearing before the Full Task Force.

4. The Administrator shall advise the complainant and the affected department/agency of the date, time and location of the Complaint Committee and/or Full Task Force meetings at which the complaint will be discussed. The respondent shall have a knowledgeable representative and/or its custodian of records at the meeting. The Administrator shall inform both parties of the deadline to submit any supporting documentation. Both parties shall be held to the stated deadlines: five working days before the hearing.

5. The Administrator shall gather all relevant documents prior to the forthcoming hearing/s and shall send the documents to the members for their review. When the documents exceed 75 pages, the complaint will be forwarded without its full exhibits, with an indication that the full exhibits are on file with the Administrator.

6. Complaint Committee Hearings:

a. The SOTF Deputy City Attorney, shall provide a written opinion to the Complaint Committee as to whether the SOTF has jurisdiction over the complaint.

b. The Complaint Committee shall review a complaint where jurisdiction is contested or a pre-hearing conference is requested at its next meeting and recommend whether the SOTF has jurisdiction. The Committee shall also focus the issues for the complainant, respondent and SOTF, or otherwise assist the parties.

1. When the Complaint Committee recommends accepting jurisdiction, it shall do so at the next regular SOTF meeting unless this would result in a violation of the 45-day time limit for resolving complaints (mandated by §67.21); in such a case, a special meeting shall be called to hear the matter. The complainant may waive the 45-day rule or request a special hearing within the 45-day period.

2. Continuances:

(a) A complainant may waive the 45-day rule and if a request for continuance is submitted at least three business days in advance of the scheduled hearing it shall be

granted. For requests submitted less than three business days in advance or for requests for subsequent continuances, the request shall be granted by a simple majority vote of the members present.

(b) If a respondent submits a request for continuance at least three business days in advance, upon agreement of the complainant the continuance shall be granted. If the complainant does not agree to the continuance, the request for continuance is not made within three business days, or the respondent is requesting a subsequent continuance, such continuance shall be granted by a simple majority vote of the members present. (Adopted 5/22/07)

C. Public Hearing Procedure

If jurisdiction is not contested or the Complaint Committee recommends jurisdiction, the complainant and respondent shall receive a written notice of the specific issues that shall be before the SOTF for a hearing, and they shall be advised to submit any evidence no later than 5 working days prior to the hearing.

Documentation

For a document to be considered, it must be received at least 5 working days before the hearing (Tuesday before the actual meeting). At the hearing before the Task Force, should the complainant submit additional documentation that has not been submitted to all parties, he or she shall be given the following options:

- (1) Proceed with the hearing without SOTF consideration of the additional documentation;
- (2) Waive his/her right to a hearing within 45 days and ask for the hearing to be continued; but
- (3) If the additional documentation raises a new issue, the complainant may
 - proceed with the hearing and file a new complaint on the additional issue(s), or
 - withdraw and amend the complaint to include the new issue(s).

D. Hearing and Findings of the Task Force

1. Prior to the meeting, the SOTF Deputy City Attorney shall prepare an instructional letter to assist the SOTF in understanding the issues. All members of the SOTF are responsible for being familiar with the complaint issues prior to the meeting.
2. The SOTF shall conduct the public hearing with the complainant and respondent present.
3. After hearing all testimony, the SOTF shall vote on an Order of Determination stating whether the record is public and/or whether the open meeting laws were obeyed.
4. After the SOTF determines whether a violation of the Ordinance has occurred, the complainant and respondent shall be notified in writing.

E. Reconsideration of Task Force Findings

1. Within 10 days of issuance 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.
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. (Approved by Task Force 10/26/04)

F. Department to Comply with Determination of the SOTF

1. The Administrator shall send the Order of Determination to the complainant and respondent and request a written response within 5 days, which shall be monitored by the SOTF Compliance and Amendments Committee. If a public records violation is found, the custodian of records shall be ordered to provide the record to the complainant within 5 days after the issuance of the Order of Determination. The Compliance and Amendments Committee shall review whether there has been compliance with the Order of Determination.
2. If there is a failure to comply, the Compliance and Amendments Committee may recommend that the SOTF notify the District Attorney, the California Attorney General, the Board of Supervisors and/or the Ethics Commission, who may take measures they deem necessary to ensure compliance with the Ordinance. A copy of the Order of Determination shall be included with such notification.
3. If appropriate, the respondent and complainant shall be sent a notice that the District Attorney, California Attorney General, Board of Supervisors and Ethics Commission have been contacted, and of the complainant's independent right to pursue the issue in court.

G. Documentation and Information Regarding Individual Complaints:

1. The Administrator shall keep a file of all documents and a log of all petitions filed with the SOTF, including the date of each petition, the department/agency against which it was made, the nature of the complaint and its status. This shall be in compliance with its records and retention schedule.
2. Copies of all correspondence relating to a complaint shall be sent to all parties.

Fw: Disingenuous or Dishonest?

From: sotf@sfgov.org
To: **Subject:** Fw: Disingenuous or Dishonest?
Date: Feb 17, 2011 12:49 PM

Members,

This is from Ray Hartz.

Chris Rustom

----- Forwarded by SOTF/SOTF/SFGOV on 02/17/2011 11:49 AM -----

Ray Hartz Jr
<rwhartzjr@sbcglo
bal.net>

02/17/2011 11:12
AM

Richard Knee
<rak0408@earthlink.net>

To

cc

James Chaffee
<chaffeej@pacbell.net>, Peter
Warfield
<libraryusers2004@yahoo.com>,
kimo@webnetic.net, Allen Grossman
<grossman356@mac.com>, SOTF
<sotf@sfgov.org>

Subject

Disingenuous or Dishonest?

Mr. Knee,

Please consider this an official communication to the SOTF and each of its members and include it in all the appropriate public records. Please ensure that each member receives a copy.

I still have not received the determinations in the cases I brought before SOTF against the Library Commission and the San Francisco Police Commission. I think it is concerning that just getting a hearing takes,

literally, months and then it takes an unacceptable additional period of time to even get the determination completed. I further question whether Mr. Threet's participation in writing the determination is valid: does Mr. Threet simply ensure the determination is legally accurate or does he actually work to ensure that the City Attorney's office gets to limit and/or restrict anything in the determination that they don't like? Does he get to do this in the cases that are actually brought before the Task Force by citizens against the City Attorney's office? Talk about a "conflict of interest!"

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."

A funny coincidence? I filed a 150 word summary with the Ethics Commission stating that placing the statement outside the minutes was in violation of the wording, and intent, of the Sunshine Ordinance. They placed a comment noting the statement had been submitted into the minutes, but, then placed the statement as an attachment. I have to say that it looks as if the SOTF, the Ethics Commission, and the City Attorneys office are actually colluding to evade the wording and the intent of the law. I have to wonder whether, contrary to the Brown Act, discussions are being held outside the view of the public to obtain results which cannot be achieved under the law or in full view of the public.

Very sincerely,

Ray Hartz

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TASK FORCE



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August 15, 2011

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

**Re: Referral for Enforcement of Order of Determination and Willful Failure
Sunshine Complaint No. 10054, Ray Hartz v. Library Commission**

The Sunshine Ordinance Task Force ("Task Force") hereby provides notification of willful failure and official misconduct findings against Jewelle Gomez of the Library Commission for failure to comply with the Order of Determination ("Order") issued on February 7, 2011 in Sunshine Complaint No. 10054, Ray Hartz v. Library Commission.

This willful failure and official misconduct finding is noticed for appropriate action pursuant to:

- (1) Sunshine Ordinance Section 67.34 whereby the "willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct" and
- (2) San Francisco City Charter Section 15.105(e) (Official Misconduct).

The Task Force further refers the Order for enforcement, and requests Ms. Gomez be required to include the written summary of 150 words or less submitted by complainant Ray Hartz in the body of the Library Commission minutes for September 16, 2010.

This enforcement referral is made pursuant to Sunshine Ordinance Section 67.30(c) whereby "the Task Force shall make referrals to a municipal office with enforcement power under this ordinance or under the California Public Records Act and Brown Act whenever it concludes that any person has violated any provisions of this ordinance or the Acts."

Background

Ray Hartz filed a complaint with the Task Force on October 14, 2011 alleging the Library Commission refused to include his written summary of 150 words or less in the body of the official minutes of its September 16, 2011 meeting.

Task Force Hearing on Complaint

On January 25, 2011, the Task Force held a hearing on the complaint.

A description of the Task Force hearing on the complaint, violations found, and decision are embodied in the Order, a copy of which is attached.

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



Hope Johnson, Chair
Sunshine Ordinance Task Force



David Snyder, Esq., Member, Seat No. 1*
Sunshine Ordinance Task Force

Encl.

cc: Ray Hartz, Complainant
Jewelle Gomez, Respondent
Jerry Threet, Deputy City Attorney

*Sunshine Ordinance Task Force Seat No. 1 is a voting seat held by an attorney specializing in sunshine law.

Partial Transcript re Discussion of Previous SOTF Rulings on Attachments to Minutes under Sec. 67.16

Jan. 25, 2011 Regular Meeting of the full SOTF

Complaint No. 10054, Ray Hartz v. Library Commission

At Approx. 00:31:45

Chair Knee: "I have a couple of things. First of all, regarding 67.16, the Task Force has . . . I think this has come before us before, in terms of where in the minutes the summary of a public comment should be. And I think the Task Force, as I recollect, and I may be incorrect in this, it seems to me, that the Task Force found it acceptable if the minutes . . . if the actual comment or the 150 word summary of the comment submitted by a member of the public was appended. But what does bother me here is there was no notation of the appendation, if that's a word, of appending. There's no notation within these minutes that the appending occurred. And that is a concern so in this case I would support the finding of 67.16."

(Full audio of the complaint is at approximately 00:02:50 to 00:38:50)

October 11, 2006

**SUNSHINE ORDINANCE TASK FORCE
COMPLIANCE AND AMENDMENTS COMMITTEE
MINUTES**

Wednesday, October 11, 2006
4:00 p.m., City Hall, Room 406

Committee Members: Richard Knee, Chair; Doug Comstock; Erica Craven

Call to Order 4:04 p.m.

Roll Call Present: Knee, Comstock, Craven

Agenda Change Item #6 taken after item #3

Deputy City Attorney: Ernest Llorente, Jr.

Clerk: Linda Wong

1. Approval of minutes of August 14, 2006, and September 11, 2006.
Speakers: None
Motion to approve minutes of August 14, 2006. (Craven/Comstock)
Ayes: Knee, Comstock, Craven
Motion to approve minutes of September 11, 2006. (Craven/Knee)
Ayes: Knee, Comstock, Craven

2. 06011 Hearing on the status of the September 26, 2006 Order of Determination of Beth Rimbey vs. Office of Emergency Services and the Mayors Office of Communications
Speakers: Beth Rimbey, Complainant; Laura Phillips, Executive Director, Office of Emergency Services.
Member Craven, in accordance with Committee consensus, requested that the item be continued to the next meeting.

3. 06015 Hearing on the status of the September 26, 2006 Order of Determination of Allen Grossman against the Office of the Clerk of the Board and Sunshine Ordinance Task Force Administrator
Speakers: Allen Grossman, Complainant and Gloria Young, Clerk of the Board
Kimo Crossman, stated that he requested the document to be provided to him in Word format and that viewing the document on the monitor is insufficient. That per the Sunshine Ordinance, records should be provided without unnecessary delay and this is unnecessary delay.
Motion to recommend to the full Task Force with a recommend from the Committee that this matter be referred to the State Attorney General, if the record has not been provided within 5 business days in Word format. (Craven/Comstock)
Ayes: Knee, Comstock, Craven

4. Discussion: Overview of metadata in electronic records; Presentation by the Department of Telecommunications and Information Services.
Marco Bruno, Department of Telecommunications and Information Services (DTIS) responded to questions from Committee members regarding the services that they provide to the Office of the Clerk of the Board.
Chair Knee, in accordance with Committee consensus requested Mr. Bruno to provide a diagram of servers maintained by DTIS.
Speakers: Kimo Crossman, stated that the questions asked are related to his two outstanding complaints against DTIS for failure to retrieve the document that the Clerk's Office refuses to provide and urged DTIS to provide the document to him. That the Committee should ask DTIS who has control and backups the servers?

Allen Grossman, asked Mr. Bruno if the Sunshine Ordinance Amendment in Word format is saved in the Board of Supervisors' server and who has access to the network.

5.

Possible amendments to Sections 67.15, 67.16, 67.18, and 67.21 to 67.25 of the Sunshine Ordinance and subsequent sections as time permits. (discussion and possible action item) (attachment)

- a. Sec. 67.15 Public Testimony
- b. Sec. 67.16 Minutes
- c. Sec. 67.18 Supervisor of Public Forum (possible new section)
- d. Sec. 67.21 Process for Gaining Access to Public Records; Administrative Appeals
- e. Sec 67.21-1 Policy Regarding Use and Purchase of Computer Systems.
- f. Sec 67.22 Release of Oral Public Information
- g. Sec 67.23 Public Review File – Policy Body Communications.
- h. Sec 67.24 Public Information that Must Be Disclosed.
- i. Sec 67.25 Immediacy of Response

Speakers: Kimo Crossman made the following suggestions: re Section 67.15 – Allow people to submit written comments for the minutes and the record when they cannot attend in person. Allow a limited Point of Order as long as it is not disruptive. Section 67.16 – change the last sentence in the first paragraph to read "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 integrally, not as a separate document, attachment, or appendix." Section 67.18 – Have an on-call phone number if there is a dispute about a meeting going into closed session or a meeting has not been properly noticed.

Sections 67.15, 67.16 and 67.18 were discussed and the Clerk recorded recommended amendments.

Chair Knee, in accordance with Committee consensus, asked the Administrator to identify for discussion and possible action Sections 67.20 through 67.29-7 of the Sunshine Ordinance for the November 2006, meeting agenda, and to note that subsequent sections may be heard if time permits.

6. Public comment on items not listed on the agenda.

Speakers: Allen Grossman, said he learned that the Administrator is no longer a full time staff to the Task Force and that violates the Sunshine Ordinance. That the Administrator should take directions from the Task Force, not the Clerk of the Board; therefore, he would like the matter regarding his request for the Sunshine Ordinance in Word format revisited.

Francisco DeCosta, stated that the City Attorney's Office determined the referendum regarding the Bayview project was not insufficient even though the Office of the Clerk of the Board believes proper procedures were followed.

Kimo Crossman, urged the Committee to reopen public comment to allow the public to speak on the Order of Determination of Allen Grossman against the Office of the Clerk of the Board and Sunshine Ordinance Task Force Administrator. That per the Sunshine Ordinance, the Clerk of the Board shall provide a full time staff to the Task Force. Since the current Administrator is serving as the Records Manager and SOTF Administrator, the Clerk's Office is in violation of the Sunshine Ordinance. Informed the Committee that DTIS failed to attend the Complaint Committee scheduled for October 10, 2006 to speak on his complaint against the department.

7. Administrator's report.

The Administrator submitted the report.

Speakers: Kimo Crossman, reiterated that the Clerk of the Board violated the Sunshine Ordinance by assigning the Administer to do two jobs and urged the Task Force to address that.

Allen Crossman, agreed with Kimo Crossman's statement.

8. Announcements, questions, and future agenda items from Committee members.
There is none.
Speakers: None

Adjournment The meeting was adjourned at 6:48 p.m.

This meeting has been audio recorded and is on file in the office of the Sunshine Ordinance Task Force

GOOD GOVERNMENT GUIDE

AN OVERVIEW OF THE LAWS GOVERNING
THE CONDUCT OF PUBLIC OFFICIALS



2006-07 EDITION

DENNIS J. HERRERA
CITY ATTORNEY OF SAN FRANCISCO

If there is a lack of a quorum at a meeting of a policy body that has committees, the parent body may not reconstitute itself as a committee of the whole or as one of its committees, even if a quorum of that committee happens to be present. Such a committee meeting would require a separate notice and the posting of an agenda.

4. VOTING

Secret ballots are prohibited. All votes must be taken publicly, other than votes at meetings permitted as closed sessions. An absent member may not vote by proxy. Charter §§ 2.108 and 4.104(3); Govt. Code § 54953(c); Admin. Code § 67.16.

With two exceptions, the Charter and Administrative Code require members of policy bodies to vote on every matter before them. Charter § 4.104, last paragraph. As noted elsewhere in this Guide, a member must not vote on a matter where the member's vote would violate a conflict of interest law. In addition, a member may be excused for any reason from voting on a matter by a motion adopted by a majority of members present. Charter § 4.104; Admin. Code § 1.29.

Except for certain procedural matters, when determining whether a vote is approved, the vote count is based on the total number of seats, rather than the number of seats currently filled or the number of members present. Charter § 4.104.

5. RECORDS OF MEETINGS

a. TAPE RECORDINGS

The Sunshine Ordinance requires each board or commission listed in the Charter to tape record each regular and special meeting, including closed sessions. These policy bodies must retain copies of tapes of meetings permanently. Admin. Code § 67.14(b). All policy bodies, even those not listed in the Charter, must tape record closed sessions. Tapes of closed sessions must be retained for at least ten years or permanently, if possible. Admin. Code § 67.8-1(a). A policy body may not charge a member of the public to listen to a tape recording of a meeting, or watch a video recording if the policy body made a video recording. Admin. Code § 67.14(b).

b. MINUTES

i. CHARTER BOARDS AND COMMISSIONS.

The Charter requires each board or commission to keep a record of the proceedings of each regular or special meeting. The record must include how each member voted on each question. Charter § 4.104.

In addition, the Sunshine Ordinance requires the clerk or secretary of every board and commission listed in the Charter to record the minutes of each meeting. Admin. Code § 67.16. The minutes must include the following:

- The time the meeting was called to order and the time the meeting was adjourned;
- 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 members and the names and titles, where applicable, of any other person attending any closed session (other than the names of applicants or employees considered in closed session for employment or employee discipline);
- A list of the members of the public who spoke on each matter if the speakers identified themselves, whether in support or opposition; and
- A brief summary of each person's statement during the public comment. Admin. Code § 67.16.

In addition, when a member has disclosed on the record a personal, professional, or business relationship as required by Section 3.214 of the Campaign and Governmental Conduct Code, that disclosure must be recorded in the minutes. See Section II(F)(5) above.

There are no other requirements for the content of minutes, except for those that a policy body may impose on itself, for example, through its bylaws. There may be variations among policy bodies in the style, length, and content of the minutes of their respective meetings. Generally, the purpose of minutes is to record the action of the policy body.

Any person speaking during a public comment period may supply a brief written summary of their comments. This summary must be included in the minutes if it is limited to no more than 150 words. Admin. Code § 67.16.

The draft minutes of each meeting must be available for inspection and copying no later than ten working days after the meeting. The officially adopted minutes must be available for inspection and copying no later than ten working days after the meeting at which the minutes are adopted. If requested to do so, the body must produce the minutes in Braille or enlarged type. Admin. Code § 67.16. In addition, each board and commission must send two copies of its minutes to the Government Information Center at the San Francisco Public Library. Admin. Code § 87.16. Minutes must also be posted on the board or commission's Web site within 48 hours after approval. Admin. Code § 67.29-2.

It is customary that minutes of a meeting be considered and adopted at the next meeting of the policy body, although that is not legally required. Occasionally a policy body may find it necessary to consider and adopt the minutes at a later meeting.

When considering approval of minutes of a meeting, a policy body may, but is not required to, vote to excuse a member from participating on the basis that the member did not attend that meeting.

ii. NON-CHARTER BOARDS AND COMMISSIONS, ADVISORY COMMITTEES, AND COMMITTEES OF PARENT BODIES.

Non-charter boards and commissions, advisory committees, and committees of parent bodies should maintain brief minutes of meetings to maintain a record of attendance by members, the actions taken and the votes on those actions. See also C&GC Code § 3.214 discussed at Section II(F)(5) above (minutes required to record disclosure of personal, professional or business relationships).

6. MAINTAINING A WEB SITE

The Sunshine Ordinance requires each City department to maintain a Web site. Each department must post on its Web site all meeting notices, agendas and minutes of all previous meetings of its policy bodies for the previous three years. The department must post notices and agendas no later than the time the department otherwise distributes this information to the public. The department must post minutes of meetings within 48 hours after they have been approved. Each department must review its Web site regularly and update it at least weekly. Admin. Code § 67.29-2.

D. CLOSED SESSIONS

The Legislature, the Board of Supervisors and San Francisco voters have recognized that a policy body may best discuss certain matters in private. Closed sessions are the exception to the general rule requiring public meetings. The exceptions are strictly limited.

Even if one of the exceptions discussed below applies, the policy body usually is not required to meet in a closed session.²⁰ The policy body makes the choice in such circumstances whether to meet in public. No member of the public has the right to demand a closed session. Except for a closed session on pending litigation, the policy body does not have to formally vote to go into closed session, although it may choose to adopt its own rule requiring such a vote.

1. NOTICE AND AGENDA REQUIREMENTS

A gathering of a policy body in closed session is a meeting and therefore subject to most of the requirements of the Brown Act and Sunshine Ordinance, including public notice and agendas. Before going into a closed session, the policy body must first meet in open session to publicly announce its intent to enter a closed session and state the grounds for the closed session. In the closed session, the policy body may consider only those matters listed on the agenda. Admin. Code § 67.11. See generally, Govt. Code §§ 54954.5, 54956.7 through 54957.

²⁰ In some instances, State or federal law requires policy bodies to keep certain matters confidential. Under those circumstances, the body must meet in a closed session to discuss such matters.

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AN OVERVIEW OF THE LAWS GOVERNING
THE CONDUCT OF PUBLIC OFFICIALS



2007-08 EDITION

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CITY ATTORNEY OF SAN FRANCISCO

b. VOTING

Secret ballots are prohibited. All votes must be taken publicly, other than votes at meetings permitted as closed sessions. An absent member may not vote by proxy. Charter §§ 2.108 and 4.104(3); Govt. Code § 54953(c); Admin. Code § 67.16.

With two exceptions, the Charter and Administrative Code require members of policy bodies to vote on every matter before them. Charter § 4.104, last paragraph. As noted elsewhere in this Guide, a member must not vote on a matter where the member's vote would violate a conflict of interest law. In addition, a member may be excused for any reason from voting on a matter by a motion adopted by a majority of members present. Charter § 4.104; Admin. Code § 1.29.

Except for certain procedural matters, when a policy body is determining whether action on an agenda matter is approved, the body must count the vote based on the total number of seats comprising the body rather than the number of seats currently filled or the number of members present. Charter § 4.104.

D. RECORDS OF MEETINGS

1. TAPE RECORDINGS

The Sunshine Ordinance requires each board or commission listed in the Charter to tape record each regular and special meeting, including closed sessions. These policy bodies must retain copies of tapes of meetings permanently. Admin. Code § 67.14(b). All policy bodies, even those not listed in the Charter, must tape record closed sessions. Tapes of closed sessions must be retained for at least 10 years, or permanently if possible. Admin. Code § 67.8-1(a). A policy body may not charge a member of the public to listen to a tape recording of a meeting, or watch a video recording if the policy body made a video recording. Admin. Code § 67.14(b).

2. MINUTES

i. CHARTER BOARDS AND COMMISSIONS.

The Charter requires each board or commission to keep a record of the proceedings of each regular or special meeting. The record must include how each member voted on each question. Charter § 4.104.

In addition, the Sunshine Ordinance requires the clerk or secretary of every board and commission listed in the Charter to record the minutes of each meeting. Admin. Code § 67.16. The minutes must include the following:

- The time the meeting was called to order and the time the meeting was adjourned;
- 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 members and the names and titles, where applicable, of any other person attending any closed session (other than the names of applicants or employees considered in closed session for employment or employee discipline);
- A list of the members of the public who spoke on each matter if the speakers identified themselves, whether in support or opposition; and
- A brief summary of each person's statement during the public comment.

Admin. Code § 67.16.

In addition, when a member has disclosed on the record a personal, professional, or business relationship as required by Section 3.214 of the Campaign and Governmental Conduct Code, that disclosure must be recorded in the minutes. See Part Two, Section II(F)(5) above.

There are no other requirements for the content of minutes, except for those that a policy body may impose on itself, for example, through its bylaws. There may be variations among policy bodies in the style, length, and content of the minutes of their respective meetings. Generally, the purpose of minutes is to record publicly the action of the policy body.

Any person speaking during a public comment period may supply a brief written summary of the comments that person made to the policy body. This summary must be included in the minutes if it is 150 words or fewer. Admin. Code § 67.16. Because this summary is not part of the official minutes adopted by the body, the summary may be included as an attachment to the minutes.

The draft minutes of each meeting must be available for public inspection and copying no later than 10 business days after the meeting. The officially adopted minutes must be available for inspection and copying no later than 10 business days after the meeting at which the minutes are adopted. If requested to do so, the body must produce the minutes in Braille or enlarged type. Admin. Code § 67.16. In addition, each board and commission must send two copies of its minutes to the Government Information Center at the San Francisco Public Library. Admin. Code § 87.16. Minutes must also be posted on the board or commission's Web site within 48 hours after approval. Admin. Code § 67.29-2.

It is customary that minutes of a meeting be considered and adopted at the next meeting of the policy body, although that is not legally required. Occasionally a policy body may find it necessary to consider and adopt the minutes at a later meeting, but within a reasonable time, the body must adopt the minutes. Charter § 4.104.

A member may vote on approval of minutes of a meeting even though the member did not attend that meeting. A policy body may, but is not required to, vote to excuse a member from participating on the basis that the member did not attend that meeting.

ii. NON-CHARTER BOARDS AND COMMISSIONS, ADVISORY COMMITTEES, AND COMMITTEES OF PARENT BODIES.

Non-charter boards and commissions, advisory committees, and committees of parent bodies should maintain brief minutes of meetings to maintain a record of attendance by members, the actions taken, and the votes on those actions. *See also* C&GC Code § 3.214 discussed at Part Two, Section II(F)(5) above (minutes required to record disclosure of personal, professional or business relationships).

E. MAINTAINING A WEB SITE

The Sunshine Ordinance requires each City department to maintain a publicly accessible Web site. Each department must post on its Web site all meeting notices, agendas and minutes of all previous meetings of its policy bodies for the previous three years. The department must post notices and agendas no later than the time the department otherwise distributes this information to the public. The department must post minutes of meetings within 48 hours after they have been approved. Each department must review its Web site regularly and update it at least weekly. Admin. Code § 67.29-2.

F. CLOSED SESSIONS

The California Legislature, the Board of Supervisors and San Francisco voters have recognized that a policy body may best discuss certain matters in private. Closed sessions are the exception to the general rule requiring public meetings. The exceptions are strictly limited.

Even if one of the exceptions discussed below applies, the policy body usually is not required to meet in a closed session. The policy body decides about whether to meet in public. No member of the public has the right to demand a closed session. Except for a closed session on pending litigation, the policy body does not have to formally vote to go into closed session, although it may choose to adopt its own rule requiring such a vote.

While it is generally the choice of a policy body about whether to meet in closed session where one of the exceptions applies, in some limited instances State or federal law requires policy bodies to keep certain matters confidential. Under those circumstances, the body must meet in a closed session to discuss such matters.