

Date: May 25, 2010

Item No. 16 & 17  
File No. 10017

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Ray Hartz against the Rent Board**
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Completed by: Chris Rustom

Date: May 21, 2010

**\*This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

\*\* The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.



DENNIS J. HERRERA  
City Attorney

JERRY THREET  
Deputy City Attorney

DIRECT DIAL: (415) 554-3914  
E-MAIL: jery.threet@sfgov.org

## MEMORANDUM

May 18, 2010

*RAY HARTZ VS. RENT BOARD (10017)*

### COMPLAINT

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz alleges that the Rent Board violated the Sunshine Ordinance by failing to include in the official minutes of its February 23, 2010 meeting his written statement of not more than 150 words. Mr. Hartz's complaint identifies Administrative Code Section 67.16 as having been violated.

#### COMPLAINANT FILES COMPLAINT:

On April 10, 2010, Mr. Hartz filed a complaint with the Task Force alleging a violation.

#### JURISDICTION

In the May 11, 2010 jurisdiction letter I provided to the Complaint Committee, I suggested that it was unclear from the Ordinance whether the Task Force has subject matter jurisdiction to adjudicate this complaint. For purposes of that letter and similar letters, we have used the term "jurisdiction" to mean whether the provision of the Ordinance the complainant claims was violated on its face applies to the individual or body against whom the complaint has been made. Upon further review and analysis, I have concluded that Admin. Code § 67.16 does not apply to the Rent Board and for that reason there is no subject matter jurisdiction regarding this complaint, which should therefore be dismissed on that ground.

Administrative Code § 67.16 provides, in relevant part:

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 . . .* 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.

## Memorandum

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The key question in determining whether § 67.16 applies to the Rent Board is whether the first sentence of Section 67.16 was meant to limit the application of that entire section regarding how minutes are to be kept only to boards and commissions enumerated by the charter. A plain reading of that section suggests that it does. Section 67.16 imposes a requirement that the secretary of each charter enumerated board and commission to record minutes for each regular and special meeting of such body, and then goes on to more fully explain what information must be included in such minutes. Thus, the content requirements for minutes that are prescribed in Section 67.16 logically would seem to apply specifically to the minutes required to be kept by that provision, i.e., the minutes of meetings of "each board and commission enumerated by the charter." As pointed out in my prior memorandum, this plain reading of § 67.16 is consistent with the interpretation of that section set forth in the City Attorney's Good Government Guide.

Even if, looking at § 67.16 in isolation, one could interpret second sentence to extend to minutes kept by policy bodies other than those referred to in the first sentence, i.e., charter enumerated boards and commissions, that interpretation does not make sense when one looks at the Sunshine Ordinance as a whole. The Ordinance contains a definition of "policy body" that broadly extends beyond charter enumerated boards and commissions to include bodies created by ordinance or resolution of the Board of Supervisors, advisory bodies created by other policy bodies and even standing committees of policy bodies. See § 67.3(d). Several sections of the Sunshine Ordinance expressly apply to "policy bodies" as thus broadly defined. E.g., § 67.5 ("All meetings of *any policy body* shall be open and public . . ."); § 67.6 ("*Each policy body, except for advisory bodies*, shall establish by resolution or motion the time and place for holding regular meetings."); § 67.7(a) ("At least 72 hours before a regular meeting, *a policy body* shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting.").

Other sections, however, including section 67.16, refer specifically to "charter enumerated boards and commissions" – a group that is considerably narrower than "policy body" as defined in the Ordinance. E.g., § 67.13(b) ("Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that . . ."); § 67.13(c) ("Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting."); § 67.14(b) ("Each board and commission enumerated in the Charter shall audio record each regular and special meeting."). Still other sections refer to specific bodies or officials. E.g., § 67.13(e) (Board of Supervisors and its Committees); § 67.29-5 ("The Mayor, The City Attorney and every Department Head").

When one views the Ordinance as a whole, it is apparent that the drafters consciously distinguished between requirements that would be imposed on *all* policy bodies and requirements that would be imposed only on a limited subset of those bodies, such as "charter enumerated boards and commissions," or on specified bodies or officials. In many respects the Ordinance imposes stricter requirements on charter boards and commissions than other types of policy bodies. In this context, the only logical reading of § 67.16 is that it requires and

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prescribes the content only of minutes kept by charter enumerated boards and commissions and does not apply more broadly to any other policy body.

Finally, the Task Force itself recognizes the distinction between policy bodies generally and boards and commissions specifically. Its proposed amendment to § 67.16 would broaden the scope of that section so as to include all policy bodies, which would not be necessary unless that section were limited to charter enumerated boards and commissions.

For all of these reasons, 67.16 does not apply to non-charter boards and commissions. The Rent Board is not a charter enumerated board, and as such, is not subject to the requirements of that section. Therefore, the Task Force does not have subject matter jurisdiction to consider the complaint.

**APPLICABLE STATUTORY SECTION(S):**

Administrative Code Section 67.16

**APPLICABLE CASE LAW:**

None.

**ISSUES TO BE DETERMINED**

**Uncontested Facts:** Mr. Hartz requested that the Rent Board include in its minutes a written statement that he provided. Mr. Hartz's complaint includes the alleged written statement, which totals less than 150 words in length. The Rent Board failed to include that statement in its minutes.

**Contested Facts:** Although the Rent Board responded to the complaint, it failed to contest any facts alleged by Mr. Hartz.

**QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- Did Mr. Hartz provide oral comments during the Rent Board meeting in question?
- If so, does the written statement he submitted for inclusion in the Rent Board minutes accurately summarize his oral comments during the meeting?

**LEGAL ISSUES/LEGAL DETERMINATIONS:**

- Is the Rent Board required to follow the format requirements for keeping of minutes under Section 67.16?
- If so, must the Rent Board include in its minutes a written statement that does not accurately summarize the comments of the speaker at the meeting in question?

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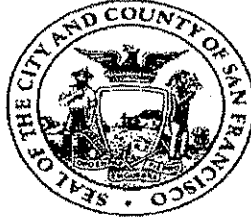
**SUGGESTED ANALYSIS**

The above analysis on the jurisdiction issue may prove determinative in this matter. However, if the Task Force concludes, against legal advice, that Section 67.16's requirements apply to the Rent Board, then it would need to resolve the further factual and legal issues outlined above.

**CONCLUSION**

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

THE TASK FORCE FINDS THE ALLEGED VIOLATIONS TO BE TRUE OR NOT TRUE.



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 RESIDENTIAL REST STABILIZATION AND ARBITRATION BOARD

Name of individual contacted at Department or Commission DELEDE WOLF

Alleged violation public records access  
 Alleged violation of public meeting. Date of meeting FEB 23, 2010

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.  
A STATEMENT WAS SUBMITTED AT THE MEETING LIST ABOVE DURING PUBLIC COMMENT. THE STATEMENT WAS NOT INCLUDED IN THE MINUTES PER SECTION 67.16

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)<sup>1</sup>  
 Name RAY WHARTZ JR Address 839 LEWENWORTH ST #304  
 Telephone No. (415) 345-9144 E-Mail Address RWHARTZJR@SBCGLOBAL.NET  
 Date 4/10/10 Ray Whartz  
 Signature

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).

February 23, 2010.

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."*

**I believe the process used by this board is unfair to all tenants with business before the board. I believe this is true for two primary reasons:**

- 1. Throughout the process, tenants are denied the opportunity to present facts or arguments to the board for their consideration when reviewing and deciding the cases before it.**
- 2. There are two sets of rules for the operation of this board: one for landlords and another for tenants. Although the ordinance itself, and other materials provided by the rent board, are available to all parties, this is not true in regard to Rent Board policies. Board members, landlords and their representatives, and others dealing with this board on a regular basis are familiar with these policies. On the other hand, tenants are unaware of these policies and as such are at a distinct disadvantage, when appearing to argue their case.**

**COPY**




April 28, 2010

Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, CA 94102-4689

RE: Sunshine Complaint Received: #10017 Ray Hartz v Rent Board

This complaint does not state a matter within the jurisdiction of the Sunshine Task Force, and so the Rent Board respectfully requests that it be dismissed. In his Sunshine Ordinance Complaint, Mr. Hartz states that the Rent Board violated Administrative Code section 67.16 of the Sunshine Ordinance by not including his written statement in the Board's minutes verbatim. However, the City Attorney has advised the Board that the written statement requirement found in Administrative Code section 67.16 only applies to boards and commissions "enumerated in the Charter," and does not apply to the Rent Board since it is not a Charter entity. (See the Good Government Guide at pages 97 and 124). Accordingly, the Rent Board contests jurisdiction over the complaint, and requests a prehearing conference in this matter on Tuesday May 11, 2010.

Sincerely,

  
Delene Wolf  
Executive Director

Enclosures





- 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.

sider applicants for employment or employee discipline, the minutes must not contain the names of the applicants or employee;

- 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; and a brief summary of each person's statement during the public comment; and
- Any person speaking during a public comment period may supply a brief written summary of their comments, which must, if limited to no more than 150 words, be included in, or appended to, the minutes.

## 2. TIMING

The policy body must:

- Make draft minutes available for inspection and copying no later than ten working days after the meeting.
- Make officially adopted minutes 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, produce the minutes in any alternative format, including Braille or enlarged type.
- Send two copies of its minutes to the San Francisco Main Library Government Information Center.
- Post the minutes on the department's Web site within 48 hours after approval.

## B. NON-CHARTER BOARDS AND COMMISSIONS

The Charter requires each board or commission to keep a record of the proceedings of each regular or special meeting indicating how each member voted on each question. Non-charter boards and commissions must keep that record, but are not required to comply with the format listed directly above.

## C. COMMITTEES

Committees are not required to keep minutes of their meetings. We advise that committees keep brief minutes consisting of a record of attendance, actions taken and votes on those actions.

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## V. DISABLED ACCESS

These requirements apply to all policy bodies.

Each policy body must make any such disability-related modification or accommodation necessary, including providing auxiliary aids or services, to permit a person with a disability to participate in a public meeting. Such accommodations include, but are not limited to:

- Making an agenda available in an appropriate alternative format, upon request;
- Providing sign language interpreters or note-takers, upon request;



May 5, 2010

Sunshine Ordinance Task Force  
City Hall, Room 244  
One Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4689

RE: Rent Board Supplemental Response to Complaint Filed by Ray Hartz, SOTF #10017

To the Sunshine Ordinance Task Force:

This letter supplements the initial response of the Residential Rent Stabilization and Arbitration Board (Rent Board) dated April 28, 2010 regarding the above-noted matter, and further explains the status of the Rent Board.

The complaint alleges that the Rent Board is in violation of City Administrative Code/Sunshine Ordinance §67.16, because Complainant Hartz submitted written public comment of 150 words or less at a Rent Board meeting, and that document was not subsequently appended to the minutes of that meeting.

The Rent Board is established by ordinance, codified in the City's Administrative Code Chapter 37 "Residential Rent Stabilization and Arbitration Board." The Rent Board is not created by or otherwise "enumerated in" the City's Charter.

Administrative Code/Sunshine Ordinance §67.16 provides that:

"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.

....  
(Emphasis added.)



Since the Rent Board is not a board or commission that is "enumerated in the Charter," Administrative Code/Sunshine Ordinance §67.16, by its own terms, does not apply to the Rent Board or to the Rent Board minutes of meetings. The Rent Board is not required by Section 67.16 to append submitted written public comment of 150 words or less to the Rent Board meeting minutes. This is not simply our interpretation. The City Attorney has made clear that the requirement does not apply to bodies such as the Rent Board, created by ordinance. See the City Attorney's "Good Government Guide" regarding public meetings, at pages 96-97 and pages 123-124, where the topic of "minutes" is explained, and where the distinction between requirements for Charter created boards/commissions and requirements for non-Charter created boards/commissions is noted (copies attached).

Accordingly, there is no legal basis for the complaint. The Rent Board respectfully requests that this Complaint be dismissed.

Sincerely,

  
Delene Wolf  
Executive Director

Enclosures

## 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;

- o The roll call vote on each matter considered at the meeting;
- o The time the board or commission began and ended any closed session;
- o 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);
- o A list of the members of the public who spoke on each matter if the speakers identified themselves, whether in support or opposition; and
- o 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.

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### III. AUDIO OR VIDEO RECORDINGS OF MEETINGS

#### A. CHARTER BOARDS AND COMMISSIONS

Every board or commission listed in the Charter must record every meeting, whether closed or open, regular or special.

#### B. POLICY BODIES OTHER THAN CHARTER BOARDS AND COMMISSIONS

##### 1. CLOSED SESSIONS

Every policy body (including all boards and commissions, whether Charter-created or not, and committees of commissions/boards) must record all closed sessions. Recordings may be audio or video recordings.

##### 2. OPEN SESSIONS

Non-charter policy bodies, (including boards, commissions, committees and task forces created by ordinance or resolution, and committees of Charter boards and commissions) are not required to record open sessions.

#### C. DISCLOSING CLOSED SESSION TAPES

Contact the Deputy City Attorney advising the policy body before disclosing any closed session tape.

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### IV. MINUTES

#### → A. CHARTER BOARDS AND COMMISSIONS

Every board or commission listed in the Charter must keep minutes of each regular or special meeting, consisting of the following:

##### 1. CONTENT

- The time the meeting was called to order;
- 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. When the policy body is meeting in closed session to con-

sider applicants for employment or employee discipline, the minutes must not contain the names of the applicants or employee;

- 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; and a brief summary of each person's statement during the public comment; and
- Any person speaking during a public comment period may supply a brief written summary of their comments, which must, if limited to no more than 150 words, be included in, or appended to, the minutes.

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## **B. NON-CHARTER BOARDS AND COMMISSIONS**

The Charter requires each board or commission to keep a record of the proceedings of each regular or special meeting indicating how each member voted on each question. Non-charter boards and commissions must keep that record, but are not required to comply with the format listed directly above.

## **C. COMMITTEES**

Committees are not required to keep minutes of their meetings. We advise that committees keep brief minutes consisting of a record of attendance, actions taken and votes on those actions.

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## **V. DISABLED ACCESS**

These requirements apply to all policy bodies.

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- Making an agenda available in an appropriate alternative format, upon request;
- Providing sign language interpreters or note-takers, upon request;



# GOOD GOVERNMENT GUIDE

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AN OVERVIEW OF THE LAWS GOVERNING  
THE CONDUCT OF PUBLIC OFFICIALS



2007-08 EDITION

**DENNIS J. HERRERA**  
CITY ATTORNEY OF SAN FRANCISCO



May 18, 2010

Sunshine Ordinance Task Force  
1 Dr. Carlton B. Goodlett Place  
Room 244  
San Francisco, CA 94102-4689

RECEIVED  
BOARD OF SUPERVISORS  
SAN FRANCISCO  
2010 MAY 18 PM 3:03  
BY *[Signature]*

RE: Rent Board Second Supplemental Response to Complaint Filed by Ray Hartz, SOTF #10017

The only issue raised by this complaint is whether the Rent Board must include in its meeting minutes a summary of a public commenter's remarks submitted to the Rent Board by the commenter. The answer is no. Because the Rent Board is created in the Administrative Code and not enumerated in the Charter, it is not subject to the requirement in Section 67.16 of the Sunshine Ordinance to include a commenter's summary of his or her public comment in meeting minutes.

1. Text of Administrative Code § 67.16

Section 67.16 of the Sunshine Ordinance states:

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*.... (Emphasis added.)

This provision applies to boards and commissions enumerated in the Charter, not other policy bodies. The first sentence states: "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*." (Emphasis added.) The second sentence then lists what must be included in "*the minutes*" and the third sentence states that a public commenter may supply a written summary of his or her comments, not to exceed 150 words, to be included in "*the minutes*." (Emphasis added.) As a simple grammatical matter, the article "the" before the term "minutes" in the second and third sentences indicates a reference point. The only plausible reference point that can be gleaned from the text is in the first sentence – "...the minutes for each ... meeting of the board or commission." And the "board or commission" to which that sentence refers is "each board and commission enumerated in the charter."

The second and third sentences of Section 67.16 do not say "the minutes of a policy body" or "the minutes of each policy body required to keep minutes" or "the minutes of each policy body that keeps minutes." Given Section 67.16's express reference point – the meeting minutes of Charter boards and commissions – there is no basis to read some other reference point into the phrase "the minutes" that appears in the second and third sentences.

## 2. Related Sunshine Ordinance Provisions

Section 67.16's reference to "each board and commission enumerated in the Charter" is not unique in the Sunshine Ordinance. For example, Section 67.14(b) states: "Each board and commission enumerated in the Charter shall audio record each regular and special meeting...." As another example, Section 67.23(a) states: "The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a [public review file] ...."

The phrase "each board and commission enumerated in the Charter" limits the policy bodies that are required to perform the tasks these respective provisions impose. Only boards and commissions enumerated in the Charter have to audio record their meetings or maintain a public review file. Other policy bodies do not. Similarly, other policy bodies do not have to keep the detailed minutes that are prescribed in Section 67.16 or include in their minutes a 150-word summary of a public commenter's remarks submitted by the commenter.

These three sections of the Sunshine Ordinance have a common feature. In each case – requiring the taping of meetings (and the indefinite retention of meeting tapes), requiring a public review file, and requiring detailed minutes of meetings (including the public commenter's summary of his or her remarks) – the Sunshine Ordinance is imposing administrative burdens on those policy bodies covered by the requirement. It is apparent

that the Sunshine Ordinance singles out only certain policy bodies – Charter boards and commissions – for these additional administrative burdens.

### 3. The Good Government Guide

The City Attorney's Good Government Guide is that Office's authoritative interpretation of numerous laws affecting City government, including the Sunshine Ordinance. As is noted in the two attachments from the Good Government Guide, the City Attorney's Office views the minutes requirements of Section 67.16, including the requirement of placing a commenter's summary of his or her comment in the minutes, as applicable only to boards and commissions enumerated in the Charter.

Attachment 1 (pages 96-98 of the Guide) lists and discusses the extensive minutes requirements for Charter boards and commissions imposed by the Sunshine Ordinance. Included in the discussion is the requirement that a commenter may supply to the Charter board or commission a brief written summary of his or her comments for inclusion in the minutes. By contrast, Attachment 1, at page 98, under the heading "Non-Charter Boards and Commissions, Advisory Bodies, and Committees of Parent Bodies," states: "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."

Attachment 2 (pages 123-24 of the Guide) makes the same point. First it lists the extensive minutes requirements for Charter boards and commissions, including the requirement that a commenter may supply to the Charter board or commission a brief written summary of his or her comments for inclusion in the minutes. Then, at page 124, it states, under the heading "Non-Charter Boards and Commissions": "The Charter requires each board or commission to keep a record of each regular or special meeting indicating how each member voted on each question. Non-charter boards and commissions must keep that record, but are not required to comply with the format listed directly above.

### 4. The Proposed Sunshine Ordinance Amendments

The proposed Sunshine Ordinance amendments, approved by the Compliance and Amendments Committee, and on the Task Force's website for consideration at the Task Force meeting of May 18, 2010, recognize the validity of the above analysis. On page 47, it is proposed that the text of Section 67.16 be changed to read: "The clerk or secretary of all policy bodies shall record the minutes for each regular and special meeting of those bodies." The footnote accompanying this revision states: "Revised to provide that minimum minute requirements apply to all Policy Bodies." See Attachment 3 (pages 47-49 of the proposed Sunshine Ordinance amendments). This proposed amendment is in keeping with proposed changes in the other existing provisions of the Sunshine Ordinance that currently apply only to "each board and commission enumerated in the charter."

The Rent Board does not address the merits of this proposed amendment of Section 67.16. But we agree with the Compliance and Amendments Committee that an amendment of Section 67.16 would be necessary to impose on a non-Charter body the requirement of including in its minutes a public commenter's summary of his or her public comment. In its current form, the Ordinance does not impose that requirement on non-Charter bodies.

Conclusion

The Rent Board is not a board or commission enumerated in the Charter. Hence Section 67.16 does not impose on the Rent Board the obligation to include in its meeting minutes a public commenter's written summary of his or her comments at a Rent Board meeting. Thus, in failing to include in its minutes the complainant's summary of his public comment at a Rent Board meeting, the Rent Board did not violate the Sunshine Ordinance.

The Rent Board respectfully requests that the complaint be dismissed

Sincerely,



Delene Wolf  
Executive Director

Enclosures

# GOOD GOVERNMENT GUIDE

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AN OVERVIEW OF THE LAWS GOVERNING  
THE CONDUCT OF PUBLIC OFFICIALS



2007-08 EDITION

**DENNIS J. HERRERA**  
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;

- o The roll call vote on each matter considered at the meeting;
- o The time the board or commission began and ended any closed session;
- o 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);
- o A list of the members of the public who spoke on each matter if the speakers identified themselves, whether in support or opposition; and
- o 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.



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### III. AUDIO OR VIDEO RECORDINGS OF MEETINGS

#### A. CHARTER BOARDS AND COMMISSIONS

Every board or commission listed in the Charter must record every meeting, whether closed or open, regular or special.

#### B. POLICY BODIES OTHER THAN CHARTER BOARDS AND COMMISSIONS

##### 1. CLOSED SESSIONS

Every policy body (including all boards and commissions, whether Charter-created or not, and committees of commissions/boards) must record all closed sessions. Recordings may be audio or video recordings.

##### 2. OPEN SESSIONS

Non-charter policy bodies, (including boards, commissions, committees and task forces created by ordinance or resolution, and committees of Charter boards and commissions) are not required to record open sessions.

#### C. DISCLOSING CLOSED SESSION TAPES

Contact the Deputy City Attorney advising the policy body before disclosing any closed session tape.

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### IV. MINUTES

#### → A. CHARTER BOARDS AND COMMISSIONS

Every board or commission listed in the Charter must keep minutes of each regular or special meeting, consisting of the following:

##### 1. CONTENT

- The time the meeting was called to order;
- 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. When the policy body is meeting in closed session to con-

sider applicants for employment or employee discipline, the minutes must not contain the names of the applicants or employee;

- 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; and a brief summary of each person's statement during the public comment; and
- Any person speaking during a public comment period may supply a brief written summary of their comments, which must, if limited to no more than 150 words, be included in, or appended to, the minutes.

## 2. TIMING

The policy body must:

- Make draft minutes available for inspection and copying no later than ten working days after the meeting.
- Make officially adopted minutes 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, produce the minutes in any alternative format, including Braille or enlarged type.
- Send two copies of its minutes to the San Francisco Main Library Government Information Center.
- Post the minutes on the department's Web site within 48 hours after approval.



## **B. NON-CHARTER BOARDS AND COMMISSIONS**

The Charter requires each board or commission to keep a record of the proceedings of each regular or special meeting indicating how each member voted on each question. Non-charter boards and commissions must keep that record, but are not required to comply with the format listed directly above.

## **C. COMMITTEES**

Committees are not required to keep minutes of their meetings. We advise that committees keep brief minutes consisting of a record of attendance, actions taken and votes on those actions.

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## **V. DISABLED ACCESS**

These requirements apply to all policy bodies.

Each policy body must make any such disability-related modification or accommodation necessary, including providing auxiliary aids or services, to permit a person with a disability to participate in a public meeting. Such accommodations include, but are not limited to:

- Making an agenda available in an appropriate alternative format, upon request;
- Providing sign language interpreters or note-takers, upon request;

AMENDMENTS FOR 2010

Approved 6/10/2008 by the Task Force Note: Additions are single-underline, deletions are ~~strikethrough~~.

Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force

Note: Additions are double-underline, deletions are ~~double-strikethrough~~.

As of May 11, 2010

1 more public employees is implicated, or on any basis other than reasonable time constraints  
2 adopted in regulations pursuant to subdivision (c) of this section.

3 (e) ~~(ef)~~ To facilitate public input, any agenda changes or continuances shall be  
4 announced by the presiding officer of a policy body at the beginning of a meeting, or as  
5 soon thereafter as the change or continuance becomes known to such presiding  
6 officer.

7 (f) ~~(fg)~~ Members of the public shall have access to all audio-visual equipment  
8 used by a department or policy body for presentations made to that policy body  
9 consistent with time limits provided in subsection (c). To the extent feasible, p~~P~~rior  
10 notification in the agenda or public notice that a presentation will be made using  
11 audio/visual equipment or technology shall be provided, listing the specific equipment.<sup>47</sup>

12 ~~(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)~~

13

14 **SECTION 67.16. MINUTES.**

15 (a) ~~The clerk or secretary of each board and commission enumerated in the~~  
16 ~~Charter~~all policy bodies shall record the minutes for each regular and special meeting of the  
17 ~~board or commission~~those bodies.<sup>48</sup>

18 (b) ~~The minutes shall state the time the meeting was called to order, the names of~~  
19 ~~the members attending the meeting,~~ time of each member's arrival if after commencement of  
20 the meeting and the time of each member's departure if prior to the adjournment of the

21

22 <sup>47</sup> Explicitly provides public access to equipment used by city employees.

23 <sup>48</sup> Revised to provide that minimum minute requirements apply to all Policy Bodies.

24

25

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Approved 3/3/2010 by the Compliance and Amendments Committee and currently under consideration by the Task Force

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As of May 11, 2010

1 meeting, the roll call vote on each matter considered at the meeting, the time the board or  
2 commission began and ended any closed session, the names of the members and the  
3 names, and titles where applicable, of any other persons attending any closed session, a list  
4 of those members of the public who spoke on each matter if the speakers identified  
5 themselves, whether such speakers supported or opposed the matter, a brief summary of  
6 each person's statement during the public comment period for each agenda item, and the  
7 time the meeting was adjourned. Any person speaking ~~during a public comment period may~~  
8 supply submit a brief written summary comments of their comments which that shall, if no  
9 more than 150 words, be included in the body of the minutes or attached to the minutes and  
10 noted in the item. The minutes shall also include the text of any resolution adopted by or  
11 modified by a policy body within the body of the minutes or as an attachment.<sup>49</sup>

12 (c) The draft minutes and any attachments thereto from of each meeting shall be  
13 posted on the policy body's website and be available for inspection and copying upon request  
14 no later than 10 business working days after the meeting. The officially adopted minutes shall  
15 be available for inspection and copying upon request no later than ten business working days  
16 after the meeting at which the minutes are adopted. Upon request, minutes required to be  
17 produced by this section shall be made available in Braille or increased type size alternative  
18 formats for persons with disabilities. If real time captioning is provided at a meeting, if  
19 separable, it shall also be posted on the web site. The City Administrator shall assist policy

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22 \_\_\_\_\_  
23 <sup>49</sup> Provides increased information must be provided in the minutes to allow more information  
24 for public review, tracking and historical research purposes.  
25

## AMENDMENTS FOR 2010

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As of May 11, 2010

1 ~~bodies in carrying out their duties under this subsection.~~<sup>50</sup> (Added by Ord. 265-93, App.  
2 8/18/93; amended by Proposition G, 11/2/99)

3

### 4 SECTION 67.17. PUBLIC COMMENT BY MEMBERS OF POLICY BODIES.

5 Every member of a policy body retains the full constitutional rights of a citizen to  
6 comment publicly on the wisdom or propriety of government actions, including those of the  
7 policy body of which he or she is a member. Policy bodies shall not sanction, reprove or  
8 deprive members of their rights as elected or appointed officials for expressing their  
9 judgments or opinions, including those which deal with the perceived inconsistency of non-  
10 public discussions, communications or actions with the requirements of state or federal law or  
11 of this ordinance. Every member of a policy body shall be allowed to speak freely on any  
12 issue before the body subject only to time limits, which ~~may~~ shall be imposed on all members  
13 equally.<sup>51</sup> The release of specific factual information made confidential by state or federal law  
14 including, but not limited to, the privilege for confidential attorney-client communications, may  
15 be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor  
16 seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93;  
17 amended by Proposition G, 11/2/99)

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<sup>50</sup> Requires posting of draft minutes on policy body website, and in alternative formats where available, as well as posting of any real-time captioning provided at a meeting to improve public access and ability to monitor actions taken in public meetings.

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<sup>51</sup> Revised to alleviate allegations of favoritism and provide equal opportunity for comment to body members.

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