

Date: September 27, 2011

Item No. 4  
File No. 11054

## SUNSHINE ORDINANCE TASK FORCE

### AGENDA PACKET CONTENTS LIST\*

- Ray Hartz v Luis Herrera of the Public Library**
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Completed by: Chris Rustom

Date: Sept. 22, 2011

**\*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.

**SUNSHINE ORDINANCE  
TASK FORCE**



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**ORDER OF DETERMINATION**  
September 3, 2011

**DATE THE DECISION ISSUED**  
August 23, 2011

*RAY HARTZ v LUIS HERRERA OF THE PUBLIC LIBRARY (CASE NO. 11054)*

**FACTS OF THE CASE**

Complainant Ray Hartz alleges that the San Francisco Public Library (the "Library") and City Librarian Luis Herrera violated Section 67.16 of the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words submitted by himself and other members of the public summarizing their public testimony. Mr. Hartz complains specifically about the minutes of the May 19, 2011 and June 16, 2011 general meetings of the Library Commission. Mr. Hartz further alleges that this violation occurred at the July 21, 2011 meeting of the Commission when it approved the minutes at issue in this complaint. Mr. Hartz further alleges that the violation is that of the Library and Mr. Herrera because the Library employs Commission Secretary Sue Blackman and Mr. Herrera supervises her work. Mr. Hartz further alleges that the above violation occurred after the Task Force referred Sunshine Ordinance Complaint 10054, a previous identical violation, to the Ethics Commission.

**COMPLAINT FILED**

On July 26, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

**HEARING ON THE COMPLAINT**

On August 23, 2011, Mr. Hartz presented his case to the Task Force. Library Commission Vice President Lee Munson and Secretary Sue Blackman represented the Library and City Librarian Luis Herrera.

Mr. Hartz testified that Mr. Herrera is Ms. Blackman's immediate supervisor and it is his obligation to ensure she performs her duties according to the law, which includes complying with decisions made by the Task Force. Ms. Blackman, he said, presented two sets of minutes for approval to the Library Commission, knowing that his 150-word statements were included as addenda and not within the body of the minutes as the Task Force had ruled in an earlier case.

He said although he reminded the Library Commission of the Task Force's decision, it nevertheless approved the minutes as presented. The Task Force, he said, specifically ordered Ms. Blackman to place the 150-word statement in the body of the minutes. Yet, he said, she was instructed by her superior not to follow the law. He also reminded the Task Force that it had voted 8-0 to put the 150-word statement in the body of the minutes and that the City Attorney was to be informed of its decision.

Ms. Blackman testified she and Mr. Herrera are at-will employees who report directly to the Library Commission. Mr. Herrera, she said, is her day-to-day supervisor but the policy regarding minutes is set by the Library Commission and Mr. Herrera does not have a role in it. She said the issue has already been addressed by the Task Force in a previous complaint and that the matter was with the Ethics Commission pending a final outcome. She said she was following the advice of the City Attorney's Office which is that the 150-word statement can be added as an addendum to the minutes. Mr. Munson said the Sunshine Ordinance does not indicate specifically where the placement should be. All it says is that the 150-word statement be included in the minutes, he said. He said the critical statements repeated verbatim by certain members of the public on each agenda item prevent an orderly flow to the minutes which then fail to reflect the events of the meeting. Ms. Blackman further stated that the Library Commission would be considering whether to add language to their minutes that clearly stated that the addendum was a part of the minutes, in order to remove any potential confusion.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After duly considering the testimony and other evidence presented, along with its prior rulings on the issue, the Task Force found that an addendum is an attachment to a document, not part of the document, and, accordingly, an addendum is not "in the minutes" as required under the Ordinance. The Task Force found that the Ordinance states in simple, plain language that the 150-word statement must be "in the minutes" and that requirement is not satisfied by attaching the statement as an addendum at the end of the minutes. The Task Force further noted that the statements should be within the body of the minutes to prevent public officials from unlawfully abridging unwanted or critical public comment.


#### **DECISION AND ORDER OF DETERMINATION**

The Task Force finds Luis Herrera of the Public Library in willful violation of Sunshine Ordinance Section 67.16 pursuant to Section 67.34 for willful failure to include the 150-word summary in the body of the minutes after a previous Order of Determination specifically instructed the Library Commission to include such statements in the body of the minutes.

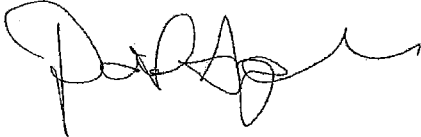
Mr. Herrera and the Library Commission shall make the changes necessary to include the summaries within the body of the minutes to comply with this Order of Determination and are instructed to appear before the Compliance and Amendments Committee on Tuesday, September 13, at 4 p.m. in Rm. 406 at City Hall.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on August 23, 2011, by the following vote: (Costa/Johnson)

Ayes: Snyder, Knee, Washburn, Costa, West, Johnson  
Excused: Cauthen, Manneh, Knoebber, Wolfe, Chan



Hope Johnson, Chair  
Sunshine Ordinance Task Force



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

- c: Ray Hartz, Complainant
- City Librarian Luis Herrera, Respondent
- Library Commission Vice-President Lee Munson, Respondent
- Commission Secretary Sue Blackman, Respondent
- Jerry Threet, Deputy City Attorney

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