

Date: Jan. 4, 2011

Item No. 13 & 14

File No. 10050

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

- Ray Hartz against the Police Commission**
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-

Completed by: Chris Rustom

Date: Dec. 23, 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: jerry.threet@sfgov.org

MEMORANDUM

October 15, 2010

RAY HARTZ v. SAN FRANCISCO POLICE COMMISSION (10050)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz alleges that the San Francisco Police Commission ("Commission") has failed to comply with the requirements of Administrative Code § 67.15(d) due to Commissioner Thomas Mazzucco interrupting his public comments on an agenda item at the September 22, 2010 Commission meeting, and due to Commission President Marshall allowing this interruption to occur.

COMPLAINANT FILES COMPLAINT:

On September 27, 2010, Mr. Hartz filed a complaint against the Commission.

JURISDICTION

The Commission is a policy body of the City; therefore this committee generally has jurisdiction to determine whether there was a violation, as alleged.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.15(d) of the Sunshine Ordinance deals with a policy body abridging or preventing public criticism of its actions.

APPLICABLE CASE LAW:

none.

Memorandum

DATE: October 15, 2010
PAGE: 2
RE: Hartz v. The Police Commission: *Complaint 10050*

ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that, at the September 22, 2010 meeting of the Commission, his public testimony on an agenda item was interrupted by Commissioner Mazzucco. Complainant further alleges that Commission President Marshall allowed this interruption of his public testimony.

The Commission does not contest that Complainant's testimony was interrupted.

Contested Facts: Complainant alleges that the interruption of his testimony violated Section 67.15(d) of the Sunshine Ordinance, without explaining further.

The Commission responds that the interruption by a Commissioner of Complainant's public testimony did not abridge or prevent him from criticizing its actions. The Commission further alleges that the interruption simply informed Complainant that his testimony was not concerning the agenda item in question. The Commission further alleges that the interruption was brief and that Complainant was allowed to complete his testimony, and the allowed to provide the same testimony on the following agenda item.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Was the public testimony of Complainant illegally abridged by the interruption of a Commissioner?
- Does Mr. Hartz dispute the facts alleged by the Commission in its response?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- If the facts alleged by the Commission are true, was the interruption by a Commission in violation of § 67.15(d)?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Memorandum

DATE: October 15, 2010
PAGE: 3
RE: Hartz v. The Police Commission: *Complaint 10050*

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.

Article I Section 3 provides:

- a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
- b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
- 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
- 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
- 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
- 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
- 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

Memorandum

DATE: October 15, 2010
PAGE: 4
RE: Hartz v. The Police Commission: *Complaint 10050*

**ATTACHED STATUTORY SECTIONS FROM CHAPTER 67 OF THE SAN
FRANCISCO ADMINISTRATIVE CODE (THE SUNSHINE ORDINANCE)
UNLESS OTHERWISE SPECIFIED**

Section 67.1 addresses Findings and Purpose

The Board of Supervisors and the People of the City and County of San Francisco find and declare:

- (a) Government's duty is to serve the public, reaching its decisions in full view of the public.
- (b) Elected officials, commissions, boards, councils and other agencies of the City and County exist to conduct the people's business. The people do not cede to these entities the right to decide what the people should know about the operations of local government.
- (c) Although California has a long tradition of laws designed to protect the public's access to the workings of government, every generation of governmental leaders includes officials who feel more comfortable conducting public business away from the scrutiny of those who elect and employ them. New approaches to government constantly offer public officials additional ways to hide the making of public policy from the public. As government evolves, so must the laws designed to ensure that the process remains visible.

[. . .]

- (f) The people of San Francisco enact these amendments to assure that the people of the City remain in control of the government they have created.
- (g) Private entities and individuals and employees and officials of the City and County of San Francisco have rights to privacy that must be respected. However, when a person or entity is before a policy body or passive meeting body, that person, and the public, has the right to an open and public process.

Memorandum

DATE: October 15, 2010
PAGE: 5
RE: Hartz v. The Police Commission: *Complaint 10050*

Section 67.15 of Ordinance provides:

SEC. 67.15. PUBLIC TESTIMONY.

(a) Every agenda for regular meetings shall provide an opportunity for members of the public to directly address a policy body on items of interest to the public that are within policy body's subject matter jurisdiction, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 67.7(e) of this article. However, in the case of a meeting of the Board of Supervisors, the agenda need not provide an opportunity for members of the public to address the Board on any item that has already been considered by a committee, composed exclusively of members of the Board, at a public meeting wherein all interested members of the public were afforded the opportunity to address the committee on the item, before or during the committee's consideration of the item, unless the item has been substantially changed since the committee heard the item, as determined by the Board.

(b) Every agenda for special meetings at which action is proposed to be taken on an item shall provide an opportunity for each member of the public to directly address the body concerning that item prior to action thereupon.

(c) A policy body may adopt reasonable regulations to ensure that the intent of subdivisions (a) and (b) are carried out, including, but not limited to, regulations limiting the total amount of time allocated for public testimony on particular issues and for each individual speaker. Each policy body shall adopt a rule providing that each person wishing to speak on an item before the body at a regular or special meeting shall be permitted to be heard once for up to three minutes. Time limits shall be applied uniformly to members of the public wishing to testify.

(d) A policy body shall **not abridge or prohibit public criticism** of the policy, procedures, programs or services of the City, or **of any other aspect of its proposals or activities, or of the acts or omissions of the body**, on the basis that the performance of one or more public employees is implicated, **or on any basis other than reasonable time constraints** adopted in regulations pursuant to subdivision (c) of this section.

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



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2010 SEP 27 AM 8:07

BY AK

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 SF Police Commission

Name of individual contacted at Department or Commission THOMAS MAZZUCCO

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting 9/22/10

Sunshine Ordinance Section Sec 67.15 (d) PUBLIC TESTIMONY
(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.

AT THE 9/22/10 MEETING OF THE POLICE COMMISSION
COMMISSIONER MAZZUCCO INTERRUPTED MY COMMENTS REGARDING
AN AGENDA ITEM AND WAS ALLOWED TO DO SO BY
THE COMMISSION PRESIDENT JOE MARSHALL

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)¹ Name RAY W HARTZ, JR Address 839 LEWENWORTH ST #304

Telephone No. (415) 345-9144 E-Mail Address RHARTZ-JR@SBCGLOBAL.NET

Date 9/23/10 Ray W Hartz
Signature

I request confidentiality of my personal information. yes no

¹ 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).



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2010 OCT 13 PM 1:10

The Police Commission
CITY AND COUNTY OF SAN FRANCISCO

BY DR. JOE MARSHALL

DR. JOE MARSHALL
President

THOMAS MAZZUCCO
Vice President

PETRA DEJESUS
Commissioner

ANGELA CHAN
Commissioner

JAMES HAMMER
Commissioner

CAROL KINGSLEY
Commissioner

R. JAMES SLAUGHTER
Commissioner

Lieutenant Joseph Reilly
Secretary

October 7, 2010

Mr. Chris Rustom, Administrator
Sunshine Ordinance Task Force
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco, CA 94102

Re: SOTF Complaint 10050

Dear Mr. Rustom,

I am responding to the above referenced complaint with respect to the September 22, 2010 meeting of the Police Commission. The agenda for this meeting was posted as required, actually more than 72 hours in advance, and proper notice of the meeting was given. The Commission took general public comment as the first item on the agenda.

The latest version of the Good Government Guide states that "There are two types of public comment – comment on agenda items and comment on matters not on the agenda but within the subject matter jurisdiction of the policy body. The latter category is often called "general public comment". (GGG IV. F. 3. a., page 127)

The Good Government Guide further states that "Members of the public have the right to criticize the policy body's programs, practices, policies and services, as well as its members and staff. The presiding officer nonetheless may reasonably confine the speaker's comments to the agenda item under consideration or, for general public comment, to the subject matter jurisdiction of the policy body". (GGG IV. F. 3. d., page 129)

On September 22, 2010, the Commission moved to agenda item 5 out of order, as discussed in the response to SOTF Complaint #10051. At the conclusion of agenda item 5, the Commission returned to the regular agenda order, returning to item 2c, and then completed the agenda item by taking public comment on items 2a, 2b and 2c. At that point the complainant addressed the Commission, remarking on its earlier action by which it took agenda item 5 out of order.

October 7, 2010

SOTF 10050

page 2

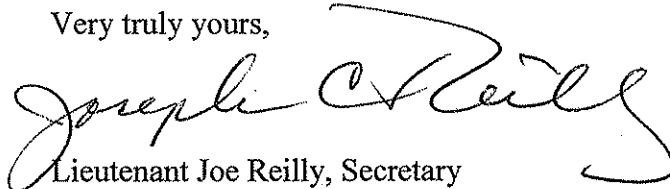
The Vice President of the Commission commented to the complainant that comments on agenda items are confined to the subject matter of the agenda item itself. Nonetheless, the complainant was not prevented from completing his commentary on the points he had raised and when finished, he left the podium.

The complainant again addressed the Commission in public comment following the next agenda item (#3) and reiterated the same observations previously made. Again, the complainant was able to complete his commentary and when finished, left the podium.

I anticipate that this review of the events of the Police Commission's September 22 meeting addresses the issues raised in the above referenced complaint.

Please call if you have any questions.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph Reilly". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end.

Lieutenant Joe Reilly, Secretary
San Francisco Police Commission

Attachment

RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2010 OCT 19 PM 2: 34

BY AK

Sunday, October 17, 2010

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco CA 94102

Re: Complaint 10050

Commissioners,

Attached you will find exhibit A, the agenda for the Police Commission meeting of September 22, 2010, and exhibit B, a listing of the meeting as actually conducted.

At the beginning of the meeting, the presiding officer, Commission President Joe Marshall made the following statement:

"Lot of items in closed session. Want to get to them as quickly as possible. So we may move things around a little bit. Just to let you know, what tonight's agenda looks like."

Agenda item number 1, public comment was completed. The commission then proceeded to cover agenda item number 2, sections a and b. The presiding officer then said the following:

"Lieut., I think we'll move the agenda now as we did go longer than anticipated. So we'll come back to 2c later on. Let's move them to item number 5."

The police commission then proceeded to vote on moving into closed session. The closed session lasted approximately 4 hours, returning to open session at 10:25 PM. The commission then proceeded to cover the remainder of the agenda in nine minutes, adjourning at 10:34 PM.

On completion of item number 2, I attempted to comment on the negative impact that these changes in the agenda had on the ability of the public to participate in, and comment on, portions of the agenda. I was interrupted in my comments by Commissioner Thomas Mazzuco, who said the following:

"Can I interrupt you for a second? This is public comment regarding items that were discussed in the Chiefs report, the Commissioners reports, and the OCC report. Items that were discussed, not your objections to the items being moved around. So your comments are not consistent and not permitted at this point."

My response: **And you are violating my constitutional right to free speech!**

Commissioner Mazzuco: **Oh, absolutely not! I would never do that! I'm just following the rules and procedures.**

The remainder of my comments, were not to complete my public comment, but, to object to being interrupted and for all intents and purposes prevented from commenting as originally intended.

Commissioner Mazzuco, seems to be of the opinion that public comment about an agenda item is limited to the substance of the item. My position is that any legitimate comment about the agenda item can include how the agenda item was handled. Those comments may also include observations on the negative impact of the agenda item being handled in such a manner. While a board or commission may set its own agenda, they may not restrict members of the public from objecting and stating the reasons for that objection. I believe the commissioner's position violates section 67.15 (d), which states:

"A policy body shall not abridge or prohibit, public criticism of the policy, procedures, programs or services of the city, or of any other aspect of its proposals or activities, or of the acts or omissions of the body, on the basis that the performance of one or more public employee is implicated, or on any basis other than reasonable time constraints adopted in regulations pursuant to subdivision (c) of this section."

In a response to this task force, Lieut. Joe Riley, commission secretary, wrote the following:

"The Vice President of the commission commented to the complainant that comments on agenda items are confined to the subject matter of the agenda item itself. Nonetheless, the complainant was not prevented from completing his commentary on the points he had raised, and when finished, he left the podium."

I believe anyone watching the video of this meeting would understand my concerns. Both the statements and actions of Commissioner Mazzuco were in violation of section 67.15 (d). I further believe that commission secretary Lieut. Riley's statement in his letter to the task force makes it clear that this is apparently commission policy and/or practice. I have filed this complaint, out of concern that these positions unlawfully restrict public comment and negatively impact the ability of the public to participate in the public meetings of the police commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Ray W. Hartz, Jr.", with a stylized flourish at the end.

Ray W. Hartz, Jr.



The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

SAN FRANCISCO POLICE COMMISSION AGENDA

REGULAR MEETING

WEDNESDAY, SEPTEMBER 22, 2010

5:30 p.m.

CITY HALL, ROOM 400
#1 Dr. Carlton B. Goodlett Place
San Francisco, California

DR. JOE MARSHALL
President
THOMAS MAZZUCCO
Vice President
PETRA DEJESUS
Commissioner
ANGELA CHAN
Commissioner
JAMES HAMMER
Commissioner
CAROL KINGSLEY
Commissioner

Lieutenant Joseph Reilly
Secretary

Roll Call; Pledge of Allegiance

1. **Public Comment**

(Members of the public may address the Police Commission for a time period determined by the Chair on items that are within the subject matter jurisdiction of the Commission but do not appear on the agenda. Speakers shall address their remarks to the Commission as a whole and not to individual Commissioners or Department personnel. Under the Police Commission Rules of Order, during the Public Comment, Commissioners are not to enter into debate or discussion with speakers.)

2. **Reports to the Commission (DISCUSSION ONLY)**

- a. Chief's Report
 - Review of recent activities
 - Presentation of Certificates of Appreciation
- b. OCC Director's Report
 - Review of recent activities
- c. Commission Reports
 - Commission President's Report
 - Commissioners' Reports

3. Discussion and possible action to request that the Department of Human Resources take all steps necessary to post a job announcement for Court Clerk, Civil Service Class 8113, to support the Police Commission, and to accept applications for that position (ACTION ITEM)

4. **Routine Administrative Business**

- a. Commission Announcements (DISCUSSION ONLY)
 - Reassignment of Disciplinary Case No. C10-042
- b. Scheduling of items identified for consideration at future Commission Meetings (ACTION ITEM)

5. Public Comment on all matters pertaining to Closed Session

6. Vote on whether to hold Closed Session. (San Francisco Administrative Code Section 67.10) (ACTION ITEM)

Exhibit A



The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

SAN FRANCISCO POLICE COMMISSION AGENDA REGULAR MEETING WEDNESDAY, SEPTEMBER 22, 2010 5:30 p.m.

CITY HALL, ROOM 400
#1 Dr. Carlton B. Goodlett Place
San Francisco, California

DR. JOE MARSHALL
President

THOMAS MAZZUCCO
Vice President

PETRA DEJESUS
Commissioner

ANGELA CHAN
Commissioner

JAMES HAMMER
Commissioner

CAROL KINGSLEY
Commissioner

Lieutenant Joseph Reilly
Secretary

7. Closed Session

- a. Pursuant to Government Code Section 54957 and San Francisco Administrative Code Section 67.10(b) and Penal Code Section 832.7: (ACTION ITEM)
PERSONNEL EXCEPTION: Discussion and possible action to accept or reject stipulated agreement of disciplinary charges filed in Case Nos. JWA C09-015, JWA C09-255, & JCT D06-179
- b. Pursuant to Government Code section 54957 and San Francisco Administrative Code Section 67.10(b) and Penal Code Section 832.7:
PERSONNEL EXCEPTION: Discussion and possible action to sustain or not sustain disciplinary charges filed in case no. C04-137 (ACTION ITEM)
The following time limits will apply:
Department's Closing Argument: up to 10 minutes
Charged Officer's Closing Argument: up to 10 minutes
Department's Rebuttal: up to 5 minutes
- c. Pursuant to Government Code section 54957 and San Francisco Administrative Code Section 67.10(b) and Penal Code Section 832.7:
PERSONNEL EXCEPTION: Hearing and Taking of Evidence and possible action to sustain or not sustain Disciplinary Charges filed in Case No. C10-169

(OPEN SESSION)

Roll Call.

8. Vote to elect whether to disclose any or all discussion held in closed session (San Francisco Administrative Code Section 67.12(a)) (ACTION ITEM)

9. Adjournment (ACTION ITEM)

*** SUPPORTING DOCUMENTATION FOR POLICE COMMISSION AGENDA ITEMS THAT ARE NOT CONFIDENTIAL AND DOCUMENTATION THAT HAVE BEEN DISTRIBUTED TO THE COMMISSION AFTER DISTRIBUTION OF THE AGENDA PACKETS ARE AVAILABLE FOR REVIEW AT THE POLICE COMMISSION OFFICE, THOMAS J. CAHILL HALL OF JUSTICE, 850 BRYANT STREET, ROOM 505, SAN FRANCISCO, CA 94103, DURING NORMAL BUSINESS HOURS. (415) 553-1667

PLEASE NOTE:

1. The Police Commission will hold a Special Meeting next month at a location other than City Hall.
The Commission will meet at the Embarcadero Conference Center, Promenade Level, Embarcadero Four, San Francisco at 10:00 a.m. on Saturday, October 2, 2010 to discuss its mission, responsibilities, rules and objectives.



The Police Commission

CITY AND COUNTY OF SAN FRANCISCO

SAN FRANCISCO POLICE COMMISSION AGENDA

REGULAR MEETING

DR. JOE MARSHALL
President

THOMAS MAZZUCCO
Vice President

PETRA DEJESUS
Commissioner

ANGELA CHAN
Commissioner

JAMES HAMMER
Commissioner

CAROL KINGSLEY
Commissioner

Lieutenant Joseph Reilly
Secretary

The Commission will hear public comment on all agenda items before or during discussion of the item. Public comment is limited to three minutes for individuals and five minutes for representatives of organizations.

The ringing of and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

KNOW YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public.

Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review.

FOR MORE INFORMATION ON YOUR RIGHTS UNDER THE SUNSHINE ORDINANCE OR TO REPORT VIOLATION OF THE ORDINANCE, CONTACT THE SUNSHINE ORDINANCE TASK FORCE: ADMINISTRATOR, CITY HALL, ROOM 244, #1 DR. CARLTON B. GOODLETT PLACE, SAN FRANCISCO, CA 94102-4689; OFFICE (415) 554-5163. COPIES OF THE SUNSHINE ORDINANCE CAN BE OBTAINED FROM THE CLERK OF THE SUNSHINE TASK FORCE, THE SAN FRANCISCO PUBLIC LIBRARY, AND ON THE CITY'S WEBSITE AT www.ci.sf.ca.us/bdsupvrs/sunshine

Lobbyist Registration and Reporting Requirements

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance [SF Campaign & Government Code §2.100] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 30 Ness Avenue, Suite 3900, San Francisco, CA 94102; telephone (415) 581-2300; fax (415) 581-2317; webs site www.sfgov.org/ethics.

~~SAN FRANCISCO POLICE COMMISSION~~
PUBLIC MEETING/HEARING ACCESSIBILITY INFORMATION

Communication accessibility services; including sign language interpreters or computer aided real time captioning will be made available upon advance request. Please call the Police Commission Office at 553-1667 (v) or 553-9194 (tty), at least 72 hours prior to a proceeding. Late requests will be honored if possible.

A **sound enhancement system** will be available on request at the proceeding.

Meeting agendas and other print materials will be made available in alternate formats (computer disk, via email, fax, large print) upon advance request at least 72 hours prior to a proceeding. Please call the Police Commission Office at 553-1667 (v) or 553-9194 (tty). Late requests will be honored if possible.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call 553-1667 to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products.

The proceeding will be held at City Hall, Room 400, #1-Dr. Carlton B. Goodlett Place, San Francisco. The closest accessible BART station is the Civic Center Station. For information about MUNI service, please call 311.

Accessible parking are available on Carlton Goodlett Place, Grove Street, and Van Ness Avenue.

Accessible seating for persons with disabilities and wheelchairs will be available.

For information about the meeting, please call 553-1667(v) or 553-9194 (tty).



**City and County
of San Francisco**

WEDNESDAY, SEPTEMBER 22, 2010

1. Public Comment
2. Reports to the Commission
- 2a. Chief's Report
- 2b. OCC Director's Report
5. Public Comment on all matters pertaining to Closed Session
6. Vote on whether to hold Closed Session. (San Francisco Administrative Code Section 67.10)
7. Closed Session
8. Vote to elect whether to disclose any or all discussion held in closed session (San Francisco Administrative Code Section 67.12(a))
- 2c. Commission Reports
3. Discussion and possible action to request that the Department of Human Resources take all steps necessary to post a job announcement for Court Clerk, Civil Service Class 8113, to support the Police Commission, and to accept applications for that position
4. Routine Administrative Business
4. Routine Administrative Business
9. Adjournment

Friday, October 29, 2010

Sunshine Ordinance Task Force

1 Dr. Carlton B. Goodlett Place, Room 244

San Francisco CA 94102

Re: Complaint 10050

Honorable members of the Task Force:

I wish to add to this complaint regarding violations of the Sunshine Ordinance a parallel complaint of violating the Brown Act. The following is an excerpt from that act:

Public meetings of governmental bodies have been found to be limited public fora. As such, members of the public have broad constitutional rights to comment on any subject relating to the business of the governmental body. Any attempt to restrict the content of such speech must be narrowly tailored to effectuate a compelling state interest. Specifically, the courts found that policies that prohibited members of the public from criticizing school district employees were unconstitutional. (Leventhal v. Vista Unified School Dist. (1997) 973 F.Supp. 951; Baca v. Moreno Valley Unified School Dist. (1996) 936 F.Supp. 719.) These decisions found that prohibiting critical comments was a form of viewpoint discrimination, and that such a prohibition promoted discussion artificially geared toward praising (and maintaining) the status quo, thereby foreclosing meaningful public dialogue.

At the Police Commission meeting of September 22, 2010, Commissioner Mazzuco interrupted my public comment on two separate matters. Two weeks later, at the commission meeting of October 6, 2010, the same Commissioner interrupted my public comment on three separate occasions. That is a total of five interruptions over the course of two meetings. Following four of the interruptions, I was allowed to continue. In one of those four I was allowed to continue on the advice of the deputy city attorney. In the particular case, which is the subject of this complaint, I was prevented from completing my comments as originally intended. I did continue solely for the purpose of stating for the public record, my belief that my rights to make public comment had been violated.

Commissioner Mazzuco is an attorney and, I believe, a former public prosecutor. Both of these factors, place an additional responsibility on the Commissioner, due to his understanding of constitutional law, the Brown Act and the Sunshine Ordinance. His familiarity with the law requires he be held to a higher standard than other members of the commission. Further, he refers to his understanding of the law in carrying out his duties as a member of the commission and its vice president. I do not believe that Commissioner Mazzuco was acting on a "good faith" belief that my comments were either inappropriate or untimely. The simple fact is that the public record shows that I was allowed to continue in four of the cases.

My Sunshine complaint and this Brown Act complaint, consist of specific charges against Thomas Mazzuco as an individual member of the Police Commission. I further believe that the true intent of his actions was to prohibit critical comments. The five interruptions constitute a pattern clearly show behavior intended to foreclose meaningful public dialogue. While the commission president, allowed the interruptions and other members of the commission failed to intercede until the very final instance, this complaint is not against them, either individually or as a group.

Sincerely,

Ray W Hartz, Jr

Director, San Francisco Open Government