

Date: Jan. 4, 2011

Item No. 3 & 4
File No. 10055

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
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MEMORANDUM

November 23, 2010

RAY HARTZ v. SAN FRANCISCO POLICE COMMISSION (10055)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz alleges that the San Francisco Police Commission ("Commission") failed to comply with the requirements of Administrative Code § 67.5 due to Commission Vice President Thomas Mazzucco stated that he and Commission President Marshall had briefly discussed that Marshall would not be present for the meeting of the Commission and that they had agreed that Agenda item 11, election of commission officers, would be continued for one week.

COMPLAINANT FILES COMPLAINT:

On October 18, 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 (Sunshine Ordinance):

Section 67.5 of the Sunshine Ordinance deals with requirements that all meetings of a policy body be open and public and comply with the Brown Act.

Section 54950 et seq. of the Cal. Gov't Code (Brown Act)

Section 54953 deals with requirements that all meetings of a legislative body be open and public.

APPLICABLE CASE LAW:

none.

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ISSUES TO BE DETERMINED

Uncontested Facts: Complainant alleges that, at the October 6, 2010 meeting of the Commission, Commission Vice President Thomas Mazzucco stated: "Commissioners, we've had a discussion about this briefly. Dr. Marshall, President Marshall is not present this evening. We've agreed to put this matter over, for one week."

The Commission does not contest that this statement was made.

Contested Facts: Complainant alleges that the statement evidences a discussion and agreement on an agenda item by members of the commission other than in public, in violation of the Brown Act.

The Commission responds, through its Secretary, that the quoted statement evidences merely a discussion between the presiding officers of the Commission concerning how to handle agenda item 11, in the absence of the President. Further, the Commission alleges that such discussions between the presiding officers are allowed under the Brown Act, and that the quoted statement merely informed other commissioners of that conversation. The Commission further alleges that the Vice President followed his statement by seeking and obtaining the agreement of the Commission before continuing agenda item 11.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Did any discussion outside of the public meeting concerning agenda item 11 take place among a quorum of commission members?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- If the facts alleged by the Complainant are true, was there a violation of the Ordinance or of the Brown Act?

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

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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.

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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.

SEC. 67.3. DEFINITIONS.

Whenever in this Article the following words or phrases are used, they shall have the following meanings:

- (b) "Meeting" shall mean any of the following:

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- (1) A congregation of a majority of the members of a policy body at the same time and place;
- (2) A series of gatherings, each of which involves less than a majority of a policy body, to hear, discuss or deliberate upon any item that is within the subject matter jurisdiction of the City, if the cumulative result is that a majority of members has become involved in such gatherings; or
- (3) Any other use of personal intermediaries or communications media that could permit a majority of the members of a policy body to become aware of an item of business and of the views or positions of other members with respect thereto, and to negotiate consensus thereupon.

SEC. 67.5. MEETINGS TO BE OPEN AND PUBLIC; APPLICATION OF BROWN ACT.

All meetings of any policy body shall be open and public, and governed by the provisions of the Ralph M. Brown Act (Government Code Sections 54950 et. seq.) and of this article. In case of inconsistent requirements under the Brown Act and this article, the requirement which would result in greater or more expedited public access shall apply.

Section 54950 et seq. of the Cal. Gov't Code (Brown Act)**54953. MEETINGS TO BE OPEN AND PUBLIC; ATTENDANCE**

(a) All meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency, except as otherwise provided in this chapter.



RECEIVED
BOARD OF SUPERVISORS
SAN FRANCISCO

2010 OCT 14 AM 8:05

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 Police Commission

Name of individual contacted at Department or Commission THOMAS MAZZUCO

Alleged violation public records access
 Alleged violation of public meeting. Date of meeting 10/7/10

Sunshine Ordinance Section 67.5 MEETINGS TO BE OPEN & PUBLIC
(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.
PLEASE SEE ATTACHED

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) Name RAY W HARTZ, JR Address 839 LEAVENWORTH ST #304
SAN FRANCISCO CA 94109

Telephone No. (415) E-Mail Address RWHARTZJR@SBCGLOBAL.NET

Date 10-10-10 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).

Monday, October 11, 2010

At the meeting of the San Francisco Police Commission on October 6, 2010 after agenda item number 11 Election of Commission Officers was called, presiding officer, commission VP Thomas Mazzuco made the following statement:

“Commissioners, we've had a discussion about this briefly. Dr. Marshall, President Marshall is not present this evening. We've agreed to put this matter over, for one week.”

On review of the video recording, posted on the commission website, I believe the above referenced discussion and agreement on this matter were conducted in violation of the Brown act.

I find this particularly egregious, due to Commissioner Mazzuco's attempt, prior to the closed session, to interfere with my comments on this very matter. Although I was, on the advice of the deputy city attorney, allowed to continue my comments, those comments were both disrupted and hampered by the actions of a sole member of the commission. Commissioner Mazzuco, from what I have observed, has become the self-appointed censor of public comment at commission meetings.



The Police Commission
CITY AND COUNTY OF SAN FRANCISCO

October 29, 2010

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

RE: SOTF Complaint 10055

Dear Mr. Rustom,

I am responding to the above referenced complaint with respect to the Police Commission's October 6th meeting.

The complainant alleges that a discussion occurred among members of the Commission that resulted in an agreement in violation of the Brown Act. I was present and heard the same comment that the complainant heard.

The reference made was to a discussion between the Commission President and Vice-President (two Commission members, less than a quorum) with respect to continuing agenda item 11 (election of Commission officers) because the President would not be at this particular meeting and unable to participate. It had been the intent of the Commission to have all seven members present for elections.

It is routine for the President and Vice-President to consult with each other before a meeting regarding the agenda, especially if the President is to be absent, since the Vice-President becomes the chairperson. The Vice-President was merely informing the other Commissioners that he had a conversation with the President on the subject.

What the complainant fails to note is that the Vice-President ended his comments in open session by seeking agreement among the other five Commissioners present to continue agenda item 11. This action alone contradicts the complainant's assertion.

I anticipate that this review of events at the Commission's October 6th meeting addresses the issues raised in the above referenced complaint.

Please call if you have any questions.

Very truly yours,

Lt. Joseph Reilly
Secretary

San Francisco Police Commission

DR. JOE MARSHALL
President

THOMAS MAZZUCCO
Vice President

PETRA DEJESUS
Commissioner

JAMES HAMMER
Commissioner

ANGELA CHAN
Commissioner

CAROL KINGSLEY
Commissioner

R. JAMES SLAUGHTER
Commissioner

Lieutenant Joe Reilly
Secretary

