

**SUNSHINE ORDINANCE
TASK FORCE**



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
TDD/TTY No. (415) 554-5227

ORDER OF DETERMINATION

April 30, 2012

DATE THE DECISION ISSUED

February 28, 2012

RAY HARTZ V ETHICS COMMISSION (CASE NO. 11088)

FACTS OF THE CASE

Complainant Ray Hartz alleges the Ethics Commission ("Ethics") violated Section 67.16 of the Sunshine Ordinance by failing to include his written summary of his public comment in the body of the minutes of the Ethics meeting held on January 10, 2011.

COMPLAINT FILED

On October 19, 2011, Mr. Harz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") alleging that Ethics violated Sunshine Ordinance Section 67.16.

HEARING ON THE COMPLAINT

On February 28, 2012, Complainant Ray Hartz appeared before the Task Force and presented his complaint. No representative for respondent Ethics appeared at the hearing and no one presented facts or evidence in support of Ethics.

During public comment at the Ethics meeting held on January 10, 2011, Mr. Hartz read a written statement not exceeding 150 words then submitted the statement to Ethics for inclusion in the minutes of the meeting. Ethics placed the written summary as an attachment to the minutes rather than in the body of the minutes.

Mr. Hartz alleged the refusal by Ethics to include his written summary in the body of the minutes is censorship of public comment and dissenting opinions. He stated attachments remove public comment from its original context and increase the chance anyone reviewing the minutes will not notice the written summaries. He further alleged Ethics does not want to represent what he said, substituting its own representation of his comments in the body of the minutes instead of using his own summary. Mr. Hartz additionally alleged Ethics failed to provide a compelling state interest to deny public comment in this way as required under the Brown Act.

Mr. Hartz stated Ethics had changed its procedures in response to Task Force findings in Cases 10054 and 11054 by including a more obvious link to the attachments but had not

ORDER OF DETERMINATION

begun including the written summaries in the body of the minutes. He further stated Ethics added a degrading disclaimer to the attached summaries that states the summaries are not approved or verified by Ethics.

Ethics Executive Director John St. Croix's November 22, 2011 written response to the complaint stated no representative would appear at the Task Force hearing because the Sunshine Ordinance does not require respondents to appear at hearings alleging violations of public meeting provisions of the Ordinance. In addition, Mr. St. Croix contested the Task Force's jurisdiction to hear complaints alleging such violations.

Mr. St. Croix further asserted that the Task Force's findings in Cases 10054 and 11054 to include written summaries in the body of the minutes were issued after the January 10, 2011 meeting, and are not retroactive. Mr. St. Croix added that the changes Ethics made to the minutes are consistent with the City Attorney's advice in the Good Government Guide that written summaries may be attached to the minutes.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force finds Sunshine Ordinance Section 67.16 provides that "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." The Task Force disagrees with the City Attorney's Office's interpretation and continues to interpret the phrase "included in the minutes" using the simple, plain language meaning of the words. Consistent with its prior findings on this issue, the Task Force finds that the written summary must be placed in the body of the minutes, not as an attachment. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" is not inclusive of the meaning "attached to the minutes."

The Task Force further notes that inclusion of the written summaries in the body of the minutes prevents public officials from unlawfully abridging unwanted or critical public comment.

The Task Force observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints alleging violations of its public meeting provisions. Section 67.30(c) requires the Task Force "make referrals to a municipal office with enforcement power under this ordinance . . . whenever it concludes that any person has violated *any provisions of this ordinance*" (emphasis added). Because it is not possible for the Task Force to find a violation of the public meeting provisions of the Sunshine Ordinance without hearing complaints alleging such violations, the Ordinance plainly vests authority in the Task Force to hold such hearings and, based on the process outlined in Section 67.21(e), to require respondents attend such hearings to present facts and evidence necessary to assess the merits of the complaints. Based on this authority, the Task Force found jurisdiction to hear this complaint at its regularly scheduled meeting held on January 24, 2012.

The Task Force additionally observes that court decisions are generally presumed retroactive. The Task Force draws an analogy between Task Force findings and court decisions, noting both do not change or create laws but merely enunciate rules that already

ORDER OF DETERMINATION

exist. Based on this analogy, the Task Force finds a respondent may be required to retroactively come into compliance with the Sunshine Ordinance as interpreted.

Based on the written response received from Ethics and review of recent minutes of Ethics meetings, the Task Force further finds that Ethics continues to fail to comply with Task Force Orders, attaching written summaries of public comment to the minutes rather than including them in the body of the minutes.

DECISION AND ORDER OF DETERMINATION

Based on the Task Force's prior findings regarding inclusion of written summaries in the body of the minutes and the implied jurisdiction under Section 67.30(c), the Task Force finds Ethics Executive Director John St. Croix in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's written summary of his public comment in the body of the minutes of the Ethics meeting held on January 10, 2011 and 67.21 (e) for failure to send a knowledgeable representative to the hearing.

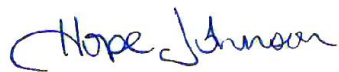
John St. Croix shall make the changes necessary to include Ray Hartz's written summary in the body of the minutes rather than as an attachment or addendum, and appear before the Compliance and Amendments Committee on Tuesday, June 19, 2012, at 4:00 p.m. in Room 406 at City Hall. The Committee shall monitor compliance with this Order of Determination.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on February 28, 2012 by the following vote: (Johnson/Costa)

Ayes: Snyder, Knee, Manneh, Costa, West, Johnson

Absent: Cauthen, Chan

Excused: Washburn, Wolfe



Hope Johnson, Chair
Sunshine Ordinance Task Force

cc: Ray Hartz, Complainant
John St. Croix, Executive Director, Ethics Commission, Respondent
Ethics Commissioners, Respondents
Jerry Threet, Deputy City Attorney