

**SUNSHINE ORDINANCE
TASK FORCE**



**City Hall
1 Dr. Carlton B. Goodlett Place Room 244
San Francisco CA 94102-4689
Tel. No. (415) 554-7724
Fax No. (415) 554-7854
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October 11, 2017

LeeAnn Pelham
Executive Director
Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

Re: Referral to the Ethics Commission for Enforcement
Ray Hartz v. Angela Calvillo, Clerk of the Board of Supervisors (Sunshine Ordinance Task Force File No. 17048)

Dear Ms. Pelham,

The Sunshine Ordinance Task Force (Task Force) hereby refers the subject complaint to the Ethics Commission (Commission) for enforcement. This referral is made pursuant to San Francisco Administrative Code (Admin. Code), Section 67.30 (c), which provides that "the Task Force shall make referrals to a municipal office with enforcement power under this Ordinance or under the California Public Records Act and the Brown Act whenever it concludes that any person has violated any provisions of this Ordinance or the Acts."

In this case, the Task Force found Angela Calvillo, Clerk of the Board of Supervisors, in violation of Administrative Code, Sections 67.16 and 67.34, by willfully failing to place a written summary of public comment, if no more than 150 words, into the body of the minutes. Attached to this referral letter are the following documents:

- Order of Determination, File No. 17048
- Supporting documents submitted for the August 2, 2017, meeting of the Task Force available at the follow link:
https://sfgov.org/sunshine/sites/default/files/sotf080217_item8.pdf
- Order of Determination, File Nos. 16088, 16089 and 16111
- Order of Determination, File No. 12050

Agendas, minutes, and audio recordings of the August 2, 2017, meeting are available on the Task Force website at:

<http://sfgov.org/sunshine/sunshine-meeting-information>

The Order of Determination, issued on August 30, 2017, describes the complaint, the procedural history at the Task Force, and the Task Force's reasoning and findings.

Please note that Clerk of the Board Calvillo was aware of the proceedings before the Task Force and choose to not attend the hearings scheduled by the Task Force.

The Task Force takes this matter very seriously and believes strongly that Clerk of the Board Calvillo intentionally ignored the decision of the Task Force and refused to place the 150 word summary of public comment submitted by members of the public into the body of the meeting minutes where the comment occurred. Instead Ms. Calvillo placed the summary onto an Addendum located at the back of the meeting minutes.

Based on the testimony and evidence presented at the hearings and the Task Force's interpretation of the Ordinance and other applicable laws, the Task Force finds that the failure to place written summaries of public comment into the body of meeting minutes violated Section 67.16 of the Sunshine Ordinance and is willful non-compliance with the Sunshine Ordinance.

The motion to find violation and refer the matter to the Ethics Commission for enforcement was passed at the August 2, 2017, Task Force meeting by the following vote:

Ayes: 8 – Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland,
B. Wolfe
Noes: 0 – None
Absent: 2 – Chopra, Tesfai

It should be noted that the Task Force, on multiple occasions, previously issued similar Order of Determinations regarding the same issue. Ms. Calvillo appears to have chosen to not accept the previous decision of the Task Force.

Thank you for your careful attention to this matter. You may contact Task Force Administrator Victor Young at sotf@sfgov.org or (415) 554-7724 with any questions.

Sincerely,


Bruce Wolfe
Chair, Sunshine Ordinance Task Force

Attachments

c: Sunshine Ordinance Task Force Members
Nicholas Colla, Deputy City Attorney
Ray Hartz (Complainant)
Angela Calvillo, Clerk of the Board of Supervisors (Respondent)

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**ORDER OF DETERMINATION
August 30, 2017**

DATE ISSUED
August 2, 2017

**CASE TITLE – Ray Hartz v. Angela Calvillo, Clerk of the Board of Supervisors
(File No. 17048)**

FACTS OF THE CASE

On May 15, 2017, the following petition/complaint was filed with the Sunshine Ordinance Task Force (SOTF):

File No. 17048: Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.16 and 67.34, by willfully failing to place a written summary of the public comment, if no more than 150 words, into the body of the minutes (March 14, 2017, and March 21, 2017, meetings).

HEARING ON THE COMPLAINT

On June 20, 2017, the Education, Outreach and Training Committee (Committee) acting in its capacity to hear petitions/complaints heard the matter and referred it to the SOTF for hearing.

Ray Hartz (Complainant) provided an overview of the complaint and requested the Committee to find violations. Mr. Hartz stated that the Task Force has previously found various departments including the Board of Supervisors in violation of the Sunshine Ordinance in regards to the placement of the 150 word public comment summary. There were no speakers in support of the Complainant. A representative from the Office of the Clerk of the Board (Respondent) was not present to present their position. There were no speakers in support of the Respondent. A question and answer period followed. The Complainant was provided the opportunity for rebuttals.

On August 2, 2017, the SOTF held a hearing to review the recommendation from Committee and/or to review the merits of the petition/complaint.

Ray Hartz (Petitioner) provided a summary of the complaint and requested the Task Force to find violations. Mr. Hartz provided a history of the various Task Force Orders of Determination over multiple hearings regarding the matter and stated that Ms. Calvillo is willfully violating the Sunshine Ordinance. There were no speakers in support of the Petitioner. The Respondent was not present. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent and Petitioner were provided the opportunity for rebuttals.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented the SOTF found that Angela Calvillo, Clerk of the Board of Supervisors, violated Administrative Code (Sunshine Ordinance), Sections 67.16 and 67.34.

ORDER OF DETERMINATION

Member J. Wolf, seconded by Member Maass, moved to find that Angela Calvillo, Clerk of the Board of Supervisors, violated Administrative Code (Sunshine Ordinance), Sections 67.16 and 67.34 by willfully failing to place a written summary of public comment, if no more than 150 words, into the body of the minutes.

The motion PASSED by the following vote:

Ayes: 8 – Eldon, J. Wolf, Maass, Cannata, Fischer, Hinze, Hyland,
B. Wolfe
Noes: 0 – None
Absent: 2 – Chopra, Tesfai

The Task Force referred the matter to the Ethics Commission.



Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Ray Hartz (Petitioner/Complainant)
Angela Calvillo, Clerk of the Board of Supervisors (Respondent)

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**ORDER OF DETERMINATION
December 16, 2016**

DATE ISSUED
December 7, 2016

CASE TITLE – Ray Hartz v. Angela Calvillo, Clerk of the Board (File No. 16088)
Ray Hartz v. Angela Calvillo, Clerk of the Board (File No. 16089)
Ray Hartz v. Angela Calvillo, Clerk of the Board (File No. 16111)

FACTS OF THE CASE

On September 13, 2016, Ray Hartz filed the following complaint:

File No. 16088: Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, by failing to place a written summary of the public comment, if no more than 150 words, in the minutes (September 6, 2016).

On September 20, 2016, Ray Hartz filed the following complaint:

File No. 16111: Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Section 67.16, by failing to place a written summary of the public comment, if no more than 150 words, in the minutes (September 13, 2016).

On September 27, 2016, Ray Hartz filed the following complaint:

File No. 16089: Complaint filed by Ray Hartz against Angela Calvillo, Clerk of the Board of Supervisors, for allegedly violating Administrative Code (Sunshine Ordinance), Sections 67.16 and 67.34, by willfully failing to place a written summary of the public comment, if no more than 150 words, in the minutes (September 20, 2016).

HEARING ON THE COMPLAINTS

On November 14, 2016, the Compliance and Amendments Committee (Committee) heard the following complaints:

File No. 16088: Ray Hartz (Complainant) provided a summary of the complaint and requested the Committee to find violations. Mr. Hartz provided a summary of previous Task Force Order of Determinations regarding the 150 word written summary in the minutes and stated that a legal opinion has never been provided regarding the matter. Wilson Ng, Office of the Clerk of the Board (Respondent), provided a summary of the department's position. Mr. Ng stated that the 150 word summary is inserted into the meeting minutes paginated as one document in the Addendum. Mr. Ng stated that the 150 word summary is placed into the Addendum after the signature of the Clerk of the Board because the Clerk of the Board cannot validate written summaries submitted for inclusion into the meetings by members of the public. In addition, Mr. Ng stated that the Task Force has previously ruled both in favor and against the Clerk of the Board in regards to the requirements for placement of the 150 word summary in meeting minutes and that the Ethics Commission has previously ruled that the placement of the 150 word summary in an Addendum does not violate the Sunshine Ordinance. Mr. Ng suggested that the Task Force seek administrative remedy with a third party, such as the Ethics Commission or the City Attorney, in order to issue a determination regarding the matter. A question and answer period followed. The Complaint and the Respondent were provided the opportunity for rebuttals.

File No. 16089: Ray Hartz (Complainant) provided a summary of the complaint and requested the Committee to find violations. Mr. Hartz restated certain arguments previously presented during the hearing of File No. 16088. Wilson Ng, Office of the Clerk of the Board (Respondent), provided a summary of the department's position. Mr. Ng stated issues and arguments regarding the complaint are the same as those provided File No. 16088. A question and answer period followed. The Complaint and the Respondent were provided the opportunity for rebuttals.

Upon review of the testimony and supporting documents the Committee referred the matters to the Task Force for hearing and suggested that the Task Force review the following issues in regards to the placement of the 150 word written summary:

- The Task Force has previously provided conflicting rulings on the matter both in favor and against the Clerk of the Board and other city departments
- The Ethics Commission has previously reviewed the findings of the Task Force and ruled against the Task Force findings that the 150 word must be in the body of the minutes

- The Task Force has previously found other city departments in violation of the Sunshine Ordinance regarding the same matter and that the departments in question now place the 150 word written summary into the body of minutes

The Committee forwarded the Respondent's suggestion that the Task Force seek administrative remedy with a third party in order to set precedence for future Task Force decision in regards to the requirement which states that the 150 written summary shall be inserting 'in the minutes'.

On December 7, 2016, the Sunshine Ordinance Task Force (Task Force) called and heard File Nos. 16088, 16089, and 16111 together with the agreement of both the Complaint and Respondent.

Ray Hartz (Complainant) provided an overview of the complaint and requested that the Task Force find violations. Mr. Hartz stated that the Task Force has previously ruled that the 150 word summary of public comment should be included into the body of minutes and not in an Addendum and provided samples of compliance by other city agencies. Mr. Hartz stated that the placement of the 150 word summary into an Addendum is a violation of his rights to free speech. There were no speakers in support of the Complainant. Wilson Ng, Office of the Clerk of the Board (Respondent), provided a summary of the department's position. Mr. Ng stated that the Addendum is part of the minutes and therefore complies with Administrative Code, Section 67.16, which states that the 150 word summary shall be in the minutes. Mr. Wilson stated that the Task Force has provide conflicting rulings regarding the 150 word summary and suggested that a third party review the legal text. There were no speakers in support of the Respondent. A question and answer period followed. The Respondent and Complainant were provided the opportunity for rebuttals.

FINDINGS OF FACT AND CONCLUSION OF LAW

Based on the testimony and evidence presented, the Task Force found that a violation of Administrative Code (Sunshine Ordinance), Section 67.16, occurred.

ORDER OF DETERMINATION

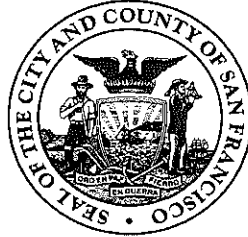
On December 7, 2016, the Task Force found that Angela Calvillo, Clerk of the Board of Supervisors, violated Administrative Code (Sunshine Ordinance), Section 67.16, by failing to include the written 150 word public comment summary submitted by Ray Hartz for the September 6, 13, and 20, 2016, Board of Supervisors meetings minutes, into the body of the minutes and not into an Addendum at the end of the minutes (File Nos. 16088, 16089, and 16111).

The motion to find the violation PASSED by the following vote:

Ayes: 9 - Baranetsky, Eldon, J. Wolf, Tesfai, Maass, Cannata, Fischer,
Hinze, B. Wolfe
Noes: 0 - None
Absent: 1 - Chopra
Excused: 1 - Hyland

Bruce Wolfe, Chair
Sunshine Ordinance Task Force

- c. Nicholas Colla, Deputy City Attorney
- Ray Hartz, Complainant
- Angela Calvillo, Clerk of the Board (Respondent)
- Wilson Ng, Office of the Clerk of the Board (Respondent)



ORDER OF DETERMINATION

May 23, 2013

DATE THE DECISION ISSUED

April 3, 2013

RAY HARTZ VS. CLERK OF THE BOARD (CASE NO. 12050)

FACTS OF THE CASE

Complainant Ray Hartz ("Complainant") alleges that Angela Calvillo, Clerk of the Board of Supervisors (the "Clerk"), repeatedly violated section 67.16 of the Ordinance by failing to include his 150-word written statements, summarizing his public comments, in the body of the minutes of the Board's meetings held on March 6, 2012; April 17, 2012; May 8, 2012; June 5, 2012; July 24, 2012; September 4, 2012; and September 11, 2012.

COMPLAINT FILED

On October 23, 2012, Mr. Hartz filed a complaint with the Task Force.

HEARING ON THE COMPLAINT

On April 3, 2013, Complainant, Mr. Hartz appeared before the Task Force and presented his claim. Respondent, Rick Caldeira, Deputy Director, Office of the Clerk of the Board presented the Clerk of the Board's defense stating 150-word statements submitted are included in the Board's minutes as an addendum to the minutes.

The issue in the case is whether the Clerk of the Board violated Sections 67.16, 67.21, 67.30(c), 67.33, and 67.34 of the Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Mr. Hartz to be persuasive and finds that Section 67.16 of the Ordinance to be applicable in this case. The Task Force does not find the testimony provided by Mr. Caldeira persuasive to this case.

DECISION AND ORDER OF DETERMINATION

The Task Force finds that Angela Calvillo, Clerk of the Board of Supervisors, violated Section 67.16 of the Sunshine Ordinance for failure to include Mr. Hartz's 150-word statement within the body of minutes at the point in the minutes where the speaker made his comments. The Clerk of the Board shall place 150-word statements submitted by members of the public within the minutes directly following the item addressed in public comment. Angela Calvillo, Clerk of the Board of Supervisors shall appear before the Education, Outreach and Training Committee on June 13, 2013.



This Order of Determination was adopted by the Sunshine Ordinance Task Force on April 3, 2013 by the following vote: (Hyland/Oka)

Ayes: Knee, Manneh, Washburn, Sims, Hyland, Oka, Fischer

Noes: Pilpel, Grant

Absent: David

A handwritten signature in cursive script that reads "Kitt Grant".

Kitt Grant, Chair
Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney
Ray Hartz, Jr., Complainant
Angela Calvillo, Clerk of the Board of Supervisors, Respondent