File No. 11098

SOTF Item No. _____

CAC Item No. 5

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task Force Date: _____

Compliance and Amendments Committee Date: April 17, 2012

CAC/SOTF

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Completed by: Andrea Ausberry **Date** April 11, 2012

Completed by: _____ **Date** _____

*An asterisked item represents the cover sheet to a document that exceeds 25 pages. The complete document is in the file.

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
March 12, 2012

DATE THE DECISION ISSUED
March 7, 2012

RAY HARTZ, JR. v. LUIS HERRERA, CITY LIBRARIAN (CASE NO. 11098)

FACTS OF THE CASE

Complainant Ray Hartz alleges that San Francisco City Librarian Luis Herrera violated the Sunshine Ordinance by failing to instruct San Francisco Library Commission Secretary Sue Blackman to include Mr. Hartz's public comment summaries of 150 words or less within the body of minutes that were approved by the San Francisco Public Library Commission during meetings held on November 17, 2011 and December 1, 2011.

COMPLAINT FILED

On December 15, 2011, Mr. Hartz filed a complaint with the Sunshine Ordinance Task Force ("Task Force") against Mr. Herrera, alleging violation of Sunshine Ordinance Section 67.16.

HEARING ON THE COMPLAINT

On March 7, 2012, Ray Hartz presented his case to the Task Force. Neither respondent Luis Herrera nor an authorized representative appeared at the hearing or provided any other response to Mr. Hartz's complaint.

The Library Commission approved draft minutes for its regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011. Those minutes did not include public comments summaries that were submitted by public speakers in the body of the minutes, but rather included them as attachments to the minutes. Mr. Hartz alleged that, by approving these minutes, the Library Commission disregarded the Task Force's prior findings in Sunshine Complaints 10054 and 11054 that public comment summaries provided by members of the public must be included within the body of the minutes, not as attachments.

Mr. Hartz further stated he filed his complaint against Mr. Herrera rather than the Library Commission because Mr. Herrera is the direct supervisor of Library Commission Secretary Sue Blackman, who prepares the draft minutes. He stated that, as a managerial employee, Mr. Herrera is responsible for ensuring San Francisco Public Library employees comply with the Sunshine Ordinance, including requiring Ms. Blackman to place his public comment

summaries in the minutes. Mr. Hartz alleged that Mr. Herrera is either directing Ms. Blackman to ignore the Task Force's findings or failing to ensure she complies with the Sunshine Ordinance.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Task Force concludes that 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 continues to interpret the phrase "included in the minutes" by using the plain meaning of the words, and finds that the public comment summaries must be placed within the body of the minutes, not as attachments. The Task Force concludes, as it has in multiple prior Orders, that the phrase "included in the minutes" does not mean "attached to the minutes."

The Task Force further observes, as it has before, that the Sunshine Ordinance vests the Task Force with authority to hear complaints regarding the Sunshine Ordinance's public meeting provisions. Sunshine Ordinance Section 67.30 requires the Task Force to "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). As it would be impossible 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 Sunshine Ordinance Section 67.21(e), to require respondents or authorized representatives to attend such hearings.

DECISION AND ORDER OF DETERMINATION

The Task Force finds City Librarian Luis Herrera in violation of Sunshine Ordinance Sections 67.16 for failure to include Mr. Hartz's public comment summaries in the Library Commission minutes and 67.21(e) for failure to appear at the Task Force hearing on the complaint.

Mr. Herrera and the Library Commission shall make the changes necessary to include the public comment summaries in the body of the minutes for the Library Commission's regular meetings held on August 18, 2011, October 6, 2011, and November 3, 2011 within 5 business days of the issuance of this Order, and appear before the Compliance and Amendments Committee on Tuesday, March 20, 2012 at 4:00 p.m. in Room 408 at City Hall. The Committee shall monitor compliance with this Order.

This Order of Determination was adopted by the Sunshine Ordinance Task Force on March 7, 2012, by the following vote: (Washburn/Costa)
Ayes: 7 – Snyder, Knee, Manneh, Washburn, Costa, West, Johnson
Noes: 0
Absent: 3 – Cauthen, Wolfe, Chan

Hope Johnson, Chair
Sunshine Ordinance Task Force

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

cc: Ray Hartz, Complainant
City Librarian Luis Herrera, Respondent
Jewelle Gomez, President, Library Commission
Jerry Threet, Deputy City Attorney

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

CITY AND COUNTY OF SAN FRANCISCO

DENNIS J. HERRERA
City Attorney

OFFICE OF THE CITY ATTORNEY

MICHAEL R. KARNS
Deputy City Attorney

Direct Dial: (415) 554-3970
Email: michael.karns@sfgov.org

MEMORANDUM

TO: Sunshine Ordinance Task Force

FROM: Michael Karns
Deputy City Attorney

DATE: March 2, 2012

RE: Complaint 11098 – Hartz v. Library, et al.

BACKGROUND

Complainant Ray Hartz ("Complainant") alleges that the San Francisco Public Library (the "Library"), as well as City Librarian Luis Herrera ("Herrera") and Library Commission ("Commission") Secretary Sue Blackman, violated the Sunshine Ordinance by failing to include in the body of the official minutes written statements of not more than 150 words supplied by members of the public during public testimony, with regard to the minutes of the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings of the Commission. Mr. Hartz further alleges that this violation occurred at the November 17, 2011 meeting of the Commission when it approved the the August 18, 2011 and October 6, 2011 minutes, and at the December 1, 2011 meeting of the Commission when it approved the November 3, 2011 minutes. Mr. Hartz further alleges that the violation is that of the Library and Herrera, as the Library employs the Commission Secretary and Mr. Herrera supervises here. Mr. Hartz's complaint identifies Administrative Code Section 67.16 as having been violated. Mr. Hartz further alleges that the above violation occurred after the Task Force had referred two previous identical violation, in Complaints 10054 and 11054, to the Ethics Commission.

COMPLAINT

On December 15, 2011, Mr. Hartz filed a complaint with the Task Force alleging a violation of Section 67.16 of the Ordinance.

JURISDICTION

The Library has not contested jurisdiction to hear the complaint.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

- Section 67.16 governs the inclusion in the minutes of an 150-word statement of a member of the public summarizing their public comment made during a meeting.

APPLICABLE CASE LAW:

None.

ISSUES TO BE DETERMINED

Uncontested/Contested Facts

Complainant alleges that Commission Secretary Sue Blackman created drafts minutes of the August 18, 2011 and October 6, 2011 general meetings of the Library Commission, which

were presented to the Commission during their November 17, 2011 meeting. Complainant further alleges that Commission Secretary Sue Blackman created drafts minutes of the November 3, 2011 general meeting of the Library Commission, which were presented to the Commission during their December 1, 2011 meeting. Complainant further alleges that these draft minutes did not include in the body of the minutes several written statements of not more than 150 words that had been supplied by members of the public summarizing their public testimony during the August 18, 2011, October 6, 2011, and November 3, 2011 general meetings, in violation of §67.16 of the Ordinance. Complainant further alleges that these violations occurred at the time that the Commission approved the above minutes on November 17, 2011 and December 1, 2011. Complainant further alleges that the violation is that of the Library and Herrera, rather than that of Ms. Blackman, because the Library employs the Commission Secretary and Mr. Herrera supervises her. Complainant identifies §67.16 of the Ordinance as having been violated. Complainant further alleges that the above violations occurred after the Task Force had referred two previous substantially similar violations, in Complaints 10054 and 11054, to the Ethics Commission.

Neither the Library nor Herrera has filed any response to this complaint. In response to previous substiantially similar complaints (Complaints 10054 and 11054), the Library and Commission contested whether their actions constitute a violation of the Ordinance. According to the Library and Commission, the Ordinance requires only that the 150 word statement summarizing public comment be included in the minutes; it does not require that the summary be in the body of the minutes in the same location as the public comment which the statement summarizes. The Library further alleges that it has determined that the manner in which it includes the summary statements in its minutes comply with the ordinance and that the City Attorney has so advised them.

QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does the requirement of §67.16 that the Commission include a 150 word summary of testimony in its minutes, further require the Commission to include that summary in the body of the minutes specifically under that agenda item?
- Does including the 150 word summary as an addendum to the meeting minutes, with a reference in the body of the minutes, violate §67.16?
- Does the action of the Library and Commission, through the actions of Ms. Blackman, in doing so, knowing that the Task Force has previously ruled that summary must be included in the body of the minutes, constitute willful failure under §67.34?
- Does Mr. Herrera's failure to instruct Ms. Blackman to follow the instructions of the previous order of the Task Force in creating the minutes in question constitute "willful failure"?

LEGAL ISSUES/LEGAL DETERMINATIONS:

Under Section 67.16 of the Ordinance:

- Determine whether Ms. Blackman's summarizing of complainant's testimony in the body of the meeting minutes, and the inclusion of his statement as an addendum to those same minutes with a reference to the summary in the body of the minutes, violated the requirements of §67.16.

Under Section 67.34 of the Ordinance:

- Determine whether this failure is a "willful failure" under §67.34.
- Determine whether this failure can be attributed to Mr. Herrera, and/or whether his failure to instruct Ms. Blackman to follow the previous order of the Task Force is a "willful failure" under §67.34.

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

Complaint #11098
Sue A. Blackman
to:
Andrea.Ausberry@sfgov.org, sotf@sfgov.org, Ray Hartz Jr
03/01/2012 03:51 PM
Cc:
Luis Herrera
Show Details

March 1, 2012

Members, Sunshine Ordinance Task Force
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Re: Complaint #11098 Ray W. Hartz v. Luis Herrera

Dear Task Force Members:

This letter is in response to Complaint #110098 ("Complaint"), which was filed by Ray Hartz on December 19, 2011 against Luis Herrera, City Librarian ("City Librarian"). For the reasons set forth below, the complaint is without merit and should be dismissed.

The Complaint

The Complaint alleges that the City Librarian violated Section 67.16 of the Administrative Code when the Library Commission approved the meeting minutes for November 17, 2011 and December 1, 2011. The complainant states that "150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determination issued by the Sunshine Ordinance Task Force (SOTF) (Determination #10054 Ray Hartz vs. Library Commission) and (Determination #11054 Ray Hartz v. Luis Herrera, City Librarian)."

A letter of referral for enforcement of Order of Determination No. 10054 was sent to the Ethics Commission on August 15, 2011. The Ethics Commission did not calendar the item and staff's recommendation was accepted. The Ethics Commission has already stated that the Library Commission was following the advice of the City Attorney and that city departments all rely in good faith on the advice of the City Attorney to ensure that they accurately adhere to the requirements of any law. Additionally, the Ethics Commission stated that the Library Commission has added a notation in the minutes that the 150 word statements are appended at the end of the Minutes. Finally, the Ethics Commission stated that "The Sunshine Ordinance provides no mechanism to compel a public official to attend a hearing before the Task Force regarding public meeting violations."

The City Librarian and the Library Commission continue to maintain that the current practice does not violate Administrative Code Section 67.16, which sets forth the requirements for meeting minutes. Charter commissions are required to include a number of requirements in the meeting minutes, including "any person speaking during a public comment period may supply a brief written summary of the comments which shall, if no more than 150 words, be included in the minutes."

The Good Government Guide 2010-11 Edition page 134 states: "The Sunshine Ordinance allows any person who spoke during a public comment period at a meeting of a Charter board or commission to supply a brief written summary of the comments to be included in the minutes if it is 150 words or less. Admin. Code Sec. 67.16. The summary is not part of the body's official minutes, nor does the body vouch for its accuracy; and the minutes may expressly so state. The summary may be included as an

attachment to the minutes. The policy body may reject the summary if it exceeds the prescribed word limit or is not an accurate summary of the speaker's public comment."

In addition to following the Good Government Guide, the Library Commission requested a legal opinion from the City Attorney's Office as to whether the Library Commission is legally required to include the 150 word summary in the body of the minutes. The City Attorney's Office reiterated that the Library's practice of including the 150 word summary as an attachment to the minutes and incorporating by reference the attachment in the body of the minutes to clearly direct the reader to the commenter's summary complied with the legal requirement.

Conclusion

Nothing in the Commission Minutes of November 17, 2011, or December 1, 2011 violates the law. To the contrary, the Commission places the 150 word statement as an addendum and mentions it in the body of the minutes in accordance with the advice of the City Attorney's Office. Since the SOTF has previously ruled on a similar issue, we see no reason why this issue should be heard again.

We hope this letter will be of assistance to the Task Force. If I can be of further assistance with respect to this complaint, please do not hesitate to contact me.

Sincerely,

Sue Blackman
Custodian of Records,
Library Commission Secretary
San Francisco Public Library
100 Larkin Street
San Francisco, CA 94102-4733
415.557.4233

SUNSHINE ORDINANCE TASK FORCE
1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco CA 94102
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http://www.sfgov.org/sunshine

SUNSHINE ORDINANCE COMPLAINT

Complaint against which Department or Commission SAN FRANCISCO PUBLIC LIBRARY

Name of individual contacted at Department or Commission LUIS HERRERA, CITY LIBRARIAN

☐ Alleged violation public records access
☒ Alleged violation of public meeting. Date of meeting 11/17/11 AND 12/1/11

Sunshine Ordinance Section SECTION 67.16 MINUTES
(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)[1] Name RAY W HARTZ, JR Address 839 LEAVENWORTH ST, #304 SAN FRANCISCO CA 94109

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

Date 12/15/11 Signature Ray W. Hartz

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).

Thursday, December 15, 2011

At a meeting of the San Francisco Public Library Commission on November 17, 2011 the commission approved minutes for the regular meeting of August 18, 2011 and the regular meeting of October 6, 2011. At a meeting of the San Francisco Public Library Commission on December 1, 2011 the commission approved minutes for the regular meeting of November 3, 2011. All documents were prepared by Ms. Sue Blackman, the Library Commission secretary. In both sets of minutes, 150 word summaries provided by myself and others were not included in the body of the minutes in accordance with the determinations issued by the Sunshine Ordinance Task Force (Determination #10054 Ray Hartz v Library Commission) and (Determination #11054 Ray Hartz v Luis Herrera, City Librarian. The meeting minutes approved at the above listed meetings are three additional violations of the ordinance. Ms. Blackman is a city employee under the direct supervision of Luis Herrera City Librarian. As her supervisor, Mr. Herrera is responsible for ensuring that Ms. Blackman performs her duties in accordance with applicable law. Mr. Herrera has either directed Ms. Blackman to ignore the task force ruling or has failed to ensure that she complies with that ruling in her preparation of the minutes submitted for approval. As a managerial employee, it is the responsibility of Mr. Herrera to ensure that all employees of the San Francisco Public Library comply with applicable laws, in this instance, the Sunshine Ordinance.