

## ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR CHAIRPERSON

Date:

March 20, 2014

PAUL. A. RENNE VICE-CHAIRPERSON

To:

Members, Ethics Commission

Brett Andrews
Commissioner

From:

Re:

John St. Croix, Executive Director

BEVERLY HAYON COMMISSIONER Show Cause Hearing – Ethics Complaint 04-140303

PETER KEANE

Commissioner

JOHN ST. CROIX EXECUTIVE DIRECTOR On March 3, 2014, the Sunshine Ordinance Task Force ("Task Force") delivered a referral letter and an Order of Determination ("Order") to the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Luis Herrera, City Librarian, as the Respondent.

According to the Order, the Task Force held a hearing on the matter (Sunshine complaint number 13013) on July 9, 2013. The complainant, Ray Hartz, alleged that "the Respondent violated the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech." According to the Order, the Task Force found that the Library Commission violated sections 67.15(a) and 67.15(b) of Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public.

The written Order was issued on August 19, 2013 and ordered the agency to provide equal access to its audio visual equipment and to appear before the Compliance and Amendments Committee on September 17, 2013. The Compliance and Amendments Committee heard the matter on September 17, 2013 and referred the matter back to the Task Force.

On October 2, 2013, the Task Force heard the matter again. It found Luis Herrera in violation of the Sunshine Ordinance as determined in its Order and referred the matter to the Ethics Commission and the Board of Supervisors.

#### HEARING PROCEDURES & SCHEDULING:

This matter will be heard under Chapter Two of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). This matter is scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at 5:30 PM on Monday, March 24, 2014, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (See Regulations, Chapter Two, § II.B.) The Commission is required to deliberate on this matter in public and public comment will be allowed at the hearing. (See Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding must be supported by findings of fact and conclusions of law and must be based on the entire record of the proceedings. (See Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter Four, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. Here, neither party has requested a continuance.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence do not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Any documents provided must be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Here, Respondent submitted documents to the Commission; Complainant did not.

Copies of all of the documents received from the Task Force regarding this matter and Respondent's written submission have been attached to this memorandum; a copy of the Regulations is also attached.



March 14, 2014

Ethics Commission John St. Croix, Executive Director City and County of San Francisco 25 Van Ness Avenue, Suite 220 San Francisco, CA 94102

Dear Ethics Commission,

On March 5, 2014, the Ethics Commission scheduled for a Show Cause Hearing a Sunshine Ordinance Task Force ("SOTF") referral letter and Order of Determination for Complaint No. 04-140303. Pursuant to the Ethics Commission Regulation for Handling Violations of the Sunshine Ordinance, Chapter Two, the San Francisco Public Library ("SFPL") Commission has the burden to show that it did not commit a violation of the Sunshine Ordinance. Ray Hartz alleges that the "Respondent violated the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at the Library Commission meetings, thereby abridging their speech." The SOTF erroneously found that the Library Commission violated Administrative Code sections 67.15(a) and 67.15(b). The SFPL Commission did not violate the Sunshine Ordinance because the Commission's decision not to expend significant resources to make the necessary accommodations to modify the technology that SFPL uses at the SFPL Koret Auditorium was based on pure economics. We ask that the Ethics Commission find that SFPL Commission did not violate Administrative Code sections 67.15(a) and 67.15(b).

#### Background

In e-mail correspondence from Mr. Ray Hartz dated January 14, 2013, he requested that members of the public be allowed to use audio visual aids to support public comment. The SFPL explored numerous options to accommodate his request including providing the public with a basic transparency device that uses an overhead projector. This option was not feasible as the projector could not project the image on the auditorium screen to allow the public and commission to view. The only viable option available for audio visual presentations at the SFPL Commission meeting which are held at the Koret Auditorium at the Main Library would require reconfiguring the SFPL's information technology set-up to allow the public to download their presentations from a laptop. This option would require additional expenses and resources. It would involve engineering staff and a construction contractor to modify the cable set up, including running cables under the stage podium and into the projection room. SFPL's facilities staff also consulted with the Department of Public Works to ensure proper ADA setup and the preliminary costs for the reconfiguration and modifications ranged up to \$40,000. The SFPL did not have the resources to incur these additional costs. Currently, the SFPL only allows its staff and individuals or organizations invited to make presentations to the SFPL Commission to use the SFPL computers to connect to its audio visual equipment. These are materials and presentations the SFPL Commission has requested and are provided to the SFPL ahead of time for review and coordination with SFPL technology system. For these reasons, Mr. Hartz' request was declined. (See attached letter to Mr. Hartz dated March 5, 2013.)

Subsequently, Mr. Hartz filed a complaint with the SOTF which was heard on July 9, 2013. The SOTF found the SFPL Commission in violation of Administrative Code Section 67.15 for abridging public comment by not providing access to audio visual equipment. The matter was also referred to the SOTF Compliance and Amendments Committee and referred back to the SOTF.

As a result of the finding by the SOTF, City Librarian Luis Herrera followed the recommendation of the SOTF and brought the matter to the SFPL Commission for discussion and possible action to allow the use of audio visuals during public comment. (See memo from the City Librarian to the Library Commission dated August 12, 2013.) The department also sought opinion from the City Attorney's Office. The City Attorney's Office advised that whether the Library provides access to the audio visual equipment is a policy determination of the SFPL Commission because neither the Brown Act nor the Sunshine Ordinance gives members of the public the right to access, during public comment, to SFPL audiovisual technology. Specifically, Administrative Code section 67.15 addresses the right to public comment but does not prescribe the method, means or mode of technology that SFPL Commission must allow the public to use during public comment. (See attached Chapter 67.15, San Francisco Administrative Code Sunshine Ordinance.)

The SFPL Commission met on August 15, 2013 and voted 6-0 to not allow the use of audio visual equipment for public comment because allowing members of the public to use audio visuals during public comment would require SFPL to expend significant resources to make the necessary accommodations to modify the technology set up that SFPL uses. The SFPL Commission made it clear that the public could bring printed copies of presentations to the Commission and have them available at the back of the room. (See attached Library Commission Minutes for August 15, 2013.)

On October 2, 2013, the Task Force heard the matter again and it moved to find SFPL Commission in violation of the Sunshine Ordinance, although the Order of Determination found against the SFPL Commission.

#### Discussion

As City Librarian, I follow the policy direction established by the Library Commission. City Charter Section 4.102 Boards and Commissions – Powers and Duties states:

- ... [E]ach appointive board, commission or other unit of government of the executive branch of the city and County shall:
- 1. Formulate, evaluate and approve goals, objectives, plans and programs and set policies consistent with the overall objectives of the City and County, as established by the Mayor and the Board of Supervisors through the adoption of City legislation; ...
- 3. After public hearing approve applicable departmental budgets or any budget modifications or fund transfers requiring the approval of the board of supervisor. (Charter Section 4.102).

I brought the matter regarding the use of audio visual equipment to the attention of the SFPL Commission and provided information for them to fully discuss and deliberate the matter and ultimately arrive at a decision. Their decision declining the use of audio visual equipment by members of the public during public comment while allowing copies of their printed presentations is their policy decision and I have adhered to that policy. Therefore, I did not violate the Sunshine Ordinance.

Furthermore, I wish to reiterate that the SFPL Commission did not violate Administrative Code section 67.15(a) or 67.15(b) because the decision not to expend significant resources to make the necessary accommodations to modify the technology at SFPL Koret Auditorium was based on fiscal matters. Administrative Code section 67.15(a) requires that SFPL provide on agendas for regular meetings an opportunity for general public comment and an opportunity for public comment on specific agenda items. (Administrative Code 67.15(a); See also Good Government Guide p.119). Admin. Code

section 67.15(d) states that "a policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..." (emphasis added).

Every member of the public, including Mr. Hartz is afforded the opportunity to provide comment during general public comment and on each specific item on the agenda. The SFPL Commission does not abridge or prohibit Mr. Hartz from complimenting or criticizing SFPL's policies, procedures, or programs. The SFPL Commission does not discriminate on the basis of content or viewpoint. No member of the public is allowed to use the audiovisual equipment during public comment. The SFPL Commission does not pick and choose which member of the general public may use the audiovisual equipment during public comment. Therefore, the decision is not based on content. Finally, the City Attorney's Office has advised the SFPL Commission that neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comments to audio visual technology. This is a policy decision that rests with SFPL Commission. In particular, Administrative Code Section 67.15 which specifically addresses the right to public comments in San Francisco does not prescribe the method, means or mode of technology that SFPL must allow the public to use during public comment. For all these reasons, SFPL Commission did not violate Administrative Code sections 67.15(a), 67.15(b), and 67.17(d). SFPL Commission has met its burden and shown that it did not violate the Sunshine Ordinance.

Sincerely,

Luis Herrera City Librarian

**Attachments** 

Cc: Sue Blackman, Alicia Cabrera, Jewelle Gomez, Ray Hartz

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March 5, 2013

Mr. Ray Hartz 839 Leavenworth Street, Apt. 304 San Francisco, CA 94109-6131 Via email: rwhartzir@sbcglobal.net

Dear Mr. Hartz,

On January 14, 2013, you requested that the San Francisco Public Library (SFPL) allow members of the public to use audiovisual aids to support their public comments. You assert that SFPL denies the public access to the audiovisual aids in an effort to abridge public criticism. You also assert that such action violates San Francisco. Administrative Code Section 67.15, which prohibits a policy body from "abridg[ing] or prohibit[ing] public criticism of the policy, procedures, programs or services of the City ...."

I respectfully disagree. The Commission does not discriminate on the basis of viewpoint in allowing members to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Library staff have explored options to accommodate your request. We looked at providing the public with a basic transparency device that uses an overhead projector. However, this option was not viable as the projector could not project the image on the auditorium stage screen to allow the public and commissioners to view. The only option available for audio visual presentations at the SFPL Commission meetings would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public lectern. This option would require the library department to incur additional expense and resources. Specifically, we would need to enlist the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage to the public lectern, where members of the public would place a laptop or use a jump drive to connect to the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would also be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000. The Library Department does not have the resources to incur these additional costs.

Currently, the Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects as part of the Bond Managers report, other City departments or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentations that the Commission has invited them to make for items that the Commission has placed on its agenda. However, SFPL staff have expended resources to load the materials into the Library's information processing system ahead of time. Where the Commission invites private parties to make presentations, SFPL expends its resources as necessary to effect those presentations. Otherwise, the department uniformly declines to allow members of the public, without regard to their viewpoint, to connect their laptops or external devices to the department's audiovisual facilities because of the additional expense and resources discussed above.

Sincerely,

Lílis Herrera City Librarian

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#### San Francisco Public Library

DATE:

August 12, 2013

TO:

Library Commission

FROM:

Luis Herrera, City Librarian

CC:

Alicia Cabrera, Deputy City Attorney

RE:

Use of Audio Visual Aids by Members of the Public

At the July 18, 2013 Library Commission meeting, I reported the matter regarding the Sunshine Ordinance Task Force findings on a complaint filed by Mr. Ray Hartz concerning the use of Audio Visual aids by members of the public during public comment. Mr. Hartz had requested that the Library Commission allow members of the public to use audiovisual aids to support their public comment. His request was declined and Mr. Hartz subsequently filed a complaint with the Sunshine Task Force asserting that the San Francisco Public Library denies public access to audiovisual aids in an effort to abridge public criticism. The complaint also asserts that such action violates San Francisco Administrative Code Section 67.15 which prohibits a policy body from "abridg[ing] public criticism of the policy, procedures, programs or services of the City...."

#### Background:

The Library explored options to accommodate his request; including providing the public with a basic transparency device that uses an overhead projector. This option was not viable as the projector could not project the image on the auditorium screen to allow the public and commission to view. The only option available for audio visual presentation at the SFPL Commission meeting would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public. This option would require the library department to incur additional expense and resources. Specifically, it would require the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would be necessary. Preliminary costs estimate from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000, which is not included in this year's budget.

The Library Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects making presentations as part of the Bond Manager's BLIP report, other City departments, or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentation on items on the agenda.

For these reasons, Mr. Hartz' request was declined. I provided a response to Mr. Hartz outlining the reasons why his request was declined in a letter dated March 5, 2013. The letter also states that "the Commission does not discriminate on the basis of viewpoint in allowing members of the public to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

#### Discussion and possible action:

The Sunshine Ordinance Task Force heard the complaint on July 9, 2013 and found the Library in violation of Admin. Code Sec. 67.15(a)(d) for abridging public comment by not providing equal access of audio visual equipment to invited parties and the public and referred the matter to the Sunshine Ordinance Task Force Compliance and Amendments Committee.

The item before the Library Commission at the August 15 meeting is an opportunity to discuss and take possible action regarding this matter. The Library Commission may choose to allow members of the public to use audio visuals during public comment by supporting additional expenses and resources discussed above in order to make the necessary accommodations to modify the current technology set up. However, the city attorney had opined that whether the Library provides the public with access to the audio visual equipment is a policy call because neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during comment to audiovisual technology, nor does the Ordinance prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment (see attached Sec. 67.15. Public Testimony).

#### 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.

(Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

#### AGENDA ITEM 2. USE OF AUDIO VISUAL EQUIPMENT BY THE PUBLIC

Luis Herrera, City Librarian, referred to a memo in the Commissioner's packet and explained the background of the item. He said there is also a letter to Mr. Ray Hartz dated March 5, 2013 and a copy of Section 67.15 Public Testimony of the Sunshine Ordinance. He said Mr. Hartz had requested that members of the public be able to use audio visual aids to support public comment. His request was declined by the library and he subsequently filed a complaint with the Sunshine Ordinance Task Force (SOTF). He said Mr. Hartz asserts that the Library denies public access to audiovisual aids to abridge public criticism and he also asserts that such action violates San Francisco Administrative Code Section 67.15. He said the Library did explore options to accommodate his request including providing the public with a basic transparency device that uses an overhead projector. He said this option was not feasible as the projector could not project the image on the auditorium screen to allow the public and commission to view. He said the only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the Library's information technology set up to allow the public to download their presentations from a laptop. He said this option would require expenditure of additional expenses and resources. He said engineering staff and a construction contractor would need to modify the cable set up, including running cables under the stage podium and into the projection room. He said we conferred with the Department of Public Works to ensure proper ADA setup and the preliminary cost estimate range was up to \$40,000 which is not included in this year's budget. He said the Library Commission only allows SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. He said for these reasons Mr. Hartz' request was declined. He said the SOTF heard the complaint on July 9 and found the Library in violation of Administrative Code Section 67.15 for abridging public comment by not providing access to the audiovisual equipment. He said they referred the matter to the SOTF Compliance and Amendments Committee. He said the item before you will give the Commission the opportunity to discuss and possibly take action on this matter. The Commission may choose to allow members of the public to use audio visuals during public comment by supporting additional expenses and resources. He said the City Attorney has opined that whether the Library provides the public with access to the audio visual equipment is a policy call because neither the Brown Act nor the Sunshine Ordinance prescribes the method, means, or mode of technology that SFPL must use to allow the public to use during public comment.

#### **Public Comment**

An anonymous citizen said this is a situation where Stacey Aldrich the State Librarian appeared before you last February and she described how communication is becoming more digital and visual and it is necessary in order to allow full discourse. He said you have in front of you a copy of the law and two letters from the City Librarian. He asked where are the letters from Ray Hartz, where is the complaint, where are the deliberations from the Sunshine Ordinance Task Force or the SOTF's Order of Determination. He said you have none of that in front of you nor do you have anything from the City Attorney that supports Luis

Herrera's characterization of their opinion. He said this is a basic right. He said the law doesn't say that you have to provide visual access. He said what the law says is that you have to provide equality and equal treatment in a public forum. He said this is a situation where this Library Commission can just say no. He said you have not been given a draft resolution so that you can see what it would look like to approve or reject. He said you have not been given any of the real information about why this is not only good policy but the law and why the SOTF approved it. He said the Commission should simply say that you are going to reject this one-sided abuse of the Commission's intelligence and approve the citizen's access to the graphics.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. The mot de Coulter is wonderfully appropriate now. The State Librarian Stacey Aldrich appeared before you in February, 2012, and described how communication is becoming more digital and visual, and that is necessary to modern discourse. You have two letters from the City Librarian. Where are the letters from Mr. Hartz, the Sunshine complaint, the Sunshine Ordinance Task Force's deliberations and determination, or confirmation of the City Attorney's opinion? The law doesn't say you have to provide visual access. It says you have to provide equal treatment in a public forum. You have not even been given a draft resolution to approve. You have no information on why the Sunshine Task Force approved it. Just say, No. You can reject this one-sided abuse of your intelligence and approve the citizen's access to graphics.

Ray Hartz, Director San Francisco Open Government, said he knows what to expect because there will be claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. He said what he submitted was two PowerPoint slides and you will see in your packets that there are two or three presentations all done in the same format and that is all it takes to include his input. He said you don't have to spend \$40,000, if you have a security risk print the documents out and scan them with your own equipment. He said these are two quotes from the authors Frank Herbert and Upton Sinclair. He said if that isn't censorship. I don't know what is. He said as he said at the SOTF hearing, all he is asking for is equal treatment. He said include his Microsoft PowerPoint slides just as you do for those of whom you approve. He said perhaps it would be more accurate to say for those who approve of you. He said it is bad enough that you have to let us speak and you can't censor what we say. He said your fear is that we would be even more effective. He said he knows there is one question that will not be asked or if it is asked it will not be answered. He said why do you want so badly to restrict what we have to say. He said the Commission is afraid we will show charts with real numbers showing that out of \$53 Million what the library got was 6% or 8% of the money. He said we have a group that raises money for the library but really raised the money to spend on themselves.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

How I expect this "discussion" to go: claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. "Straw men" set up to allow you to "pretend to discuss" restrictions on public comment. As I said at the SOTF hearing: all I'm asking for is equal treatment! Include my Microsoft PowerPoint slides just as you do for those who you approve. Perhaps it would be more accurate to say for those who approve of you? It's bad enough that you have to let us speak and you can't censor what we say! Your fear is that we would be even more effective! I know there is one question that will not be asked, or if it is will not be answered: why do you want so badly to restrict what we say?

Peter Warfield, Library Users Association, said this is both a sad moment and an opportunity for this Library Commission to show some level of responsibility and of legal behavior. He said he expects no action and very little real discussion. He said the SOTF heard Mr. Hartz' complaint and the Library's defense of its actions refusing to provide PowerPoint displays for the public. He said the Library brought their head of Facilities and the Library was practically laughed out of the room. He said the Task Force members were openly skeptical and scoffing and counting reasons given by the Library. He said the request Mr. Hartz has made is for the same treatment as other people that you have presenting including others like the Friends that have no connection with the Library. He said there would be no requirement whatsoever for any change of equipment. He said Mr. Hartz pointed out that if you are worried about security issues you can simply print out the document, scan it and include it in what you present to the public when the public speaks. He said even if what he thinks is a preposterously inflated number of \$40,000, what is equal access worth for democracy. He said you spend money on ADA requirements and you spend money on these microphones. He said \$40,000 is a speck of dust compared to your \$100 Million budget this year. He said the City Librarian could foot the bill himself with just his own discretionary fund that he gets from the Friends.

Robert B. Livingston said he has a lot of problems with this Library and there are three things he would like to ask for. He said first thing is anybody that comes to this Library gets on the elevator and they discover the buttons aren't lit so they have to guess which one is opening for them. He said fix the buttons in the elevator. He said second when you get out on the third floor you look out the window and you see a ledge out there with a crushed can and wet newspaper that have been there for God knows how long and it seems like people working in this environment would notice something like that and have it cleaned off. He said the last thing is if you go into any Department Store multi-level you find a menu on the inside of the elevator that directs you to what is on each floor and the library should have the same thing.

#### Commission Discussion

President Gomez said thank you to staff for framing our discussion and giving us the information that we are able to consider. She said she would make a

correction to one thing that was said by a member of the public that these particular three people who are lobbying for this audiovisual access indicate that everyone else from the public has the opportunity, including the Friends who do not have a direct connection to the Library and she thinks that is not actually true. She said the only people we have using audiovisual equipment to make presentations are those with whom we do have a direct connection, which does not include people of the general public who just want to make comments. She said while the SOTF seemed to indicate that this was an abridgement of rights, she said she does not think the Sunshine Ordinance or the Brown Act directs us that we are required to have that access to the general public. She said she does not feel like we are losing people's comments. She said they get plenty of comments that are articulated well enough for us to understand without the addition of audiovisual presentations. She said she does not feel suspicious that our City Librarian is not giving us full information from our City Attorney. She said she feels that this policy is a policy of the San Francisco Public Library Commission and no other commission is in a place to see how our policies are enacted. She said that is her understanding.

Commissioner Mall asked what other Commissions do.

Luis Herrera, City Librarian, said that Commissions that meet at City Hall that have the set up for this do allow this. He said there are others that do not.

Sue Blackman, Library Commission Secretary, said there are a couple of Commissions that do not meet at City Hall that do not allow use of the audio visual equipment and there are others that do. She said it is just a policy of each Commission.

Commissioner Mall asked if the three minute allotment that we allow for public comment includes the time for the audiovisual set up.

President Gomez said the three minutes would include that during the course of the meeting, but she said any set up would have to happen with staff prior to the meeting.

Luis Herrera, City Librarian, read Administrative Code Section 67.15 (c) "...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." He said it does not speak specifically to any other permeation to that but it does specify upwards to three minutes.

Commissioner Ono asked what is involved in the \$40,000 set up.

Luis Herrera, City Librarian, said the AV laptop is currently set up on the lectern on the stage and in order to connect it to the public lectern we would have to run cables underneath the auditorium to hook it up there. He said in addition it would require modifications to allow for the laptop to be accessible to anyone with physical disabilities. He said DPW did the estimate of the costs.

Commissioner Lee said there is a comment about the two slides and that they would be missed if they did not have the slides. He said he observed that when public comment was given the copies could be given to the Secretary and they could be included in the Minutes. He said if they are included in the Minutes they would be available on the website and there would be nothing hidden and we would not need to spend the \$40,000.

President Gomez asked about the 150 word summaries.

Sue Blackman, Library Commission Secretary, said the documents brought in by the public would be referred to in the Minutes but they would not be incorporated into the Minutes like the 150 word statements are.

Commissioner Randlett asked if there is anything that prevents printed materials being available by the public in the back of the auditorium.

Sue Blackman, Library Commission Secretary, said there is nothing to prevent the public from bringing copies of printed materials and placing them at the back of the auditorium.

Commissioner Randlett said this would be a low-tech solution that if somebody had a PowerPoint they wanted everyone in the forum to see that they could print it and leave it at the back of the auditorium and advise people that if they wanted to see it, it was available and copies could be made available to the Commissioners.

Commissioner Munson said when we have an audiovisual presentation it is at the request of the Commission or City Librarian and it is part of a program that is planned to inform the public. He said this is one of the ways we communicate about the basic business of the Commission. He said that the presenters have a contract with the Library. He said if members of the audience want to make comments they have their three minutes to do so. He said the Commission spends a lot of time listening to public comment and some of it is helpful and some of it is not helpful. He said there can be different opinions about what is being said. He said if the Commission wants to reserve this means of communication that is reasonable. He said if the public presents all kinds of stuff, the meetings could get very long and could be confusing to the public. He said a person that disagrees can provide written material at the back of the room and talk at the podium for three minutes. He said we are trying to get the job done.

<u>Motion:</u> By Commissioner Randlett, seconded by Commissioner Mall given the concern that is being raised by the public that they do not have the ability to present materials to all those at the meeting in some type of presentation form that they do have the ability to bring materials in a printed form and that they use their time in public comment to be able to go through the materials and that if other people have questions they can ask the speakers at the end of the meeting in the back of the room.

Action: AYES 6-0: (Lee, Gomez, Mall, Munson, Ono, and Randlett.)

		·	



### ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y, HUR CHAIRPERSON

PAUL A. RENNE VICE-CHAIRPERSON

BRETT ANDREWS
COMMISSIONER

BEVERLY HAYON COMMISSIONER

> PETER KEANE COMMISSIONER

JOHN ST. CROIX EXECUTIVE DIRECTOR

#### Via U.S. Mail & E-mail

Date:

March 5, 2014

To:

Ray Hartz, Complainant

Luis Herrera, City Librarian, Respondent

From:

John St. Croix, Executive Director

Re:

NOTICE of SHOW CAUSE HEARING: March 24, 2014 at 5:30 PM

**Complaint No. 04-140303** 

On March 3, 2014, the Sunshine Ordinance Task Force ("Task Force") delivered a referral letter and an Order of Determination ("Order") to the Ethics Commission. The referral was made pursuant to section 67.30(c) of the Sunshine Ordinance and named Luis Herrera, City Librarian, as the Respondent.

According to the Order, the Task Force held a hearing on the matter on July 9, 2013. The complainant, Ray Hartz, alleged that "the Respondent violated the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech." The Task Force found that the Library Commission violated sections 67.15(a) and 67.15(b) of Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public.

The written Order was issued on August 19, 2013 and ordered the agency to provide equal access to its audio visual equipment and to appear before the Compliance and Amendments Committee on September 17, 2013. The Compliance and Amendments Committee heard the matter on September 17, 2013 and referred the matter back to the Task Force.

On October 2, 2013, the Task Force heard the matter again. It moved to find Luis Herrera in violation of the Sunshine Ordinance as determined in its Order of Determination and referred the matter to the Ethics Commission.

#### HEARING PROCEDURES & SCHEDULING:

This matter will be heard under <u>Chapter Two</u> of the Ethics Commission Regulations for Handling Violations of the Sunshine Ordinance ("Regulations"). This matter is

scheduled to be heard at a Show Cause Hearing during the next regular Ethics Commission meeting at 5:30 PM on Monday, March 24, 2014, in Room 400 in City Hall.

According to Chapter Two of the Regulations, the Respondent bears the burden to show that he or she did not violate the Sunshine Ordinance. (*See* Regulations, Chapter Two, § II.B.) The Commission shall deliberate this matter in public and public comment will be allowed at the hearing. (See Regulations, Chapter Two, § II.D.) The votes of at least three Commissioners are required to make a finding that a Respondent has met his or her burden and has not committed a violation of the Sunshine Ordinance. The finding shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings. (*See* Regulations, Chapter Two, § II.D.)

Neither the Respondent nor the Complainant is required to attend the hearing. However, if either party fails to appear, and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing, or no later than Friday, March 7, 2014.

The Respondent and the Complainant may speak on his or her own behalf, subject to the following time limits: Respondent shall be permitted a five-minute statement; Complainant shall be permitted a five-minute statement; and Respondent shall be permitted a three-minute rebuttal.

Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing, or no later than Friday, March 14, 2014.

Copies of all of the documents received from the Task Force regarding this matter have been attached to this memorandum; a copy of the Regulations is also attached.

#### 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

March 3, 2014

San Francisco Ethics Commission 25 Van Ness Avenue, Suite 220 San Francisco, CA 94102

Re: Sunshine Ordinance Task Force (SOTF) referral to the Ethics Commission -Ray Hartz Jr. against Luis Herrera, City Librarian (Sunshine Ordinance Complaint No. 13013)

Dear Ethics Commission:

On July 9, 2013, the Sunshine Ordinance Task Force heard Complaint No. 13013, by Ray Hartz Jr. (Complainant) against Luis Herrera, City Librarian (Respondent). The Complainant alleged that the Respondent violated the Sunshine Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

Mr. Hartz appeared before the Task Force and presented his claim. Respondents Sue Blackman, Library Commission Secretary, and Roberto Lombardi, Library Logistics, presented the Library's defense. The issue in the case was whether the Agency violated Sunshine Ordinance Section 67.15 of the Ordinance.

Based on the testimony and evidence presented, the Task Force found the testimony of Mr. Hartz to be persuasive and finds Sections 67.15(a) and 67.15(d) of the Ordinance to be applicable in this case. The Task Force does not find testimony provided by the Library persuasive to this case. An Order of Determination was issued on August 19, 2013.

At the September 17, 2013, the Compliance and Amendments Committee, Mr. Hartz provided an update on the August 19, 2013, Order of Determination from the July 9, 2013, SOTF meeting. Mr. Hartz stated the Library has not allowed access to its audio visual equipment, failing to comply with the Order of Determination. Michael Jeffers, Library (Respondent), referred the committee to the Library's letter dated September 12, 2013, stating the Library Commission voted 6-0 to bar use of Library-provided audiovisual equipment for public comment, because allowing members of the public to use audio-visuals during public comment would require the Library to expend significant

resources to make the necessary accommodations to modify the technology set up that the Library uses.

Member Grant, seconded by Chair Washburn, moved to refer the matter back to the Task Force with notice to be sent requiring the City Librarian to attend the Task Force's next proceedings on the matter; recommendation of referral to Ethics Commission.

At the October 2, 2013, SOTF meeting Mr. Hartz provided an updated and overview of the complaint. Sue Blackman, Library Commission Secretary (Respondent), provided an overview of the department's defense.

Member Washburn, seconded by Member David, moved to find Luis Herrera, City Librarian, in violation of the Sunshine Ordinance as determined in the Order of Determination; referral to the Ethics Commission and the Board of Supervisors for enforcement.

This request and referral is made under Section 67.30(c) whereby the Task Force shall make referrals to a municipal office with enforcement power under the Sunshine 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.

Thank you for your timely attention to this matter. A description of the Task Force hearing, violations found, and decision are described in the attached Order of Determination. Please contact the Sunshine Ordinance Task Force Administrator at sotf@sfgov.org or (415) 554-7724 with any questions or concerns.

Kitt Grant, Chair

Sunshine Ordinance Task Force

Encl.

c: Ray Hartz Jr., Complainant Luis Herrera, City Librarian Sue Blackman, Library Commission Nicholas Colla, Deputy City Attorney Jerry Threet, Deputy City Attorney CITY AND COUNTY OF SAN FRANCISCO



SUNSHINE ORDINANCE TASK FORCE

#### ORDER OF DETERMINATION August 19, 2013

**DATE THE DECISION ISSUED** July 9, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013)

# THE SAN FRANCISCON

#### **FACTS OF THE CASE**

Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

#### **COMPLAINT FILED**

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

#### HEARING ON THE COMPLAINT

On July 9, 2013, Complainant, Mr. Hartz appeared before the Task Force and presented his claim. Respondents Sue Blackman, Library Commission Secretary and Roberto Lombardi, Library Logistics presented the Library's defense.

The issue in the case is whether the Agency violated Section 67.15 of the Ordinance.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Complainant Mr. Hartz to be persuasive and finds that Sections 67.15(a) and 67.15(d) to be applicable in this case. The Task Force does not find testimony provided by the Library persuasive to this case.

#### **DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. The Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with this Order.

#### SUNSHINE ORDINANCE TASK FORCE

#### CITY AND COUNTY OF SAN FRANCISCO

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 9,

2013 by the following vote: (Sims/Oka)

Ayes: Knee, Washburn, Sims, David, Hyland, Oka, Fischer, Grant

Noes: Pilpel

Kitt Grant, Chair

Miss Dund

Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney

Ray Hartz, Jr., Complaint

Sue Blackman, Library Commission Secretary, Respondent

Roberto Lombardi, Library Logistics, Respondent

#### **Full Board Packet**



## SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 406 City Hall, 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

July 9, 2013 – 4:30 PM

#### **Special Meeting**

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

Seat 1	(Vacant)	Seat 8	Todd David
Seat 2	Richard Knee (Hold Over)	Seat 9	Chris Hyland
Seat 3	Kitt Grant – <b>Chair</b>	Seat 10	Louise Fischer – Vice Chair
Seat 4	(Vacant)	Seat 11	Bruce Oka
Seat 5	Allyson Washburn (Hold Over)		
Seat 6	David Pilpel	Ex-officio	Angela Calvillo
Seat 7	David Sims	Ex-officio	(Vacant)

- 2. **File No. 12007:** The Education, Outreach and Training Committee has referred File No. 12007, the Library Users Association against Supervisor Campos for responding late to an immediate disclosure request and redacting information from Bernal Heights Branch Library Mural related documents inappropriately. (approximately 15 minutes) (Discussion and Possible action) (attachment)
- 3. **File No. 13005:** Complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission. (approximately 45 minutes) (Discussion and Action)

- 4. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. (No Action) **Public comment shall be taken at 5:00 pm or as soon thereafter as possible.**
- 5. **File No. 13011:** Complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary. (approximately 45 minutes) (Discussion and Action)
- 6. **File No. 13012:** Complaint filed by Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed by Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. (approximately 45 minutes) (Discussion and Action)
- 7. **File No. 13013:** Complaint filed by Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed by Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. (approximately 45 minutes) (Discussion and Action)

- 8. **File No. 13014:** Complaint filed by Ray Hartz Jr. against Ben Rosenfield, City Controller for allegedly failing to provide filings by the City Librarian, Luis Herrera of gifts from The Friends of the San Francisco Public Library. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed by Ray Hartz Jr. against Ben Rosenfield, City Controller for allegedly failing to provide filings by the City Librarian, Luis Herrera of gifts from The Friends of the San Francisco Public Library. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by Ray Hartz Jr. against Ben Rosenfield, City Controller for allegedly failing to provide filings by the City Librarian, Luis Herrera of gifts from The Friends of the San Francisco Public Library. (approximately 45 minutes) (Discussion and Action)
- 9. **File No. 13015:** Complaint filed by William Ledford against the Office of the City Attorney for allegedly failing to process and complete an immediate disclosure request. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed by William Ledford against the Office of the City Attorney for allegedly failing to process and completes an immediate disclosure request. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by William Ledford against the Office of the City Attorney for allegedly failing to process and complete an immediate disclosure request. (approximately 45 minutes) (Discussion and Action)
- 10. **Approval of Minutes from the January 16, 2013 Special Meeting.** (approximately 5 minutes) (Action) (attachment)
- 11. **Approval of Minutes from the February 6, 2013 Regular Meeting.** (approximately 5 minutes) (Action) (attachment)
- 12. **Approval of Minutes from the March 6, 2013 Regular Meeting.** (approximately 5 minutes) (Action) (attachment)
- 13. **Approval of Minutes from the April 3, 2013 Regular Meeting.** (approximately 5 minutes) (Action) (attachment)
- 14. **Approval of Minutes from the May 1, 2013 Regular Meeting.** (approximately 5 minutes) (Action) (attachment)
- 15. Approval of Minutes from the June 5, 2013 Regular Meeting. (approximately 5 minutes) (Action) (attachment)
- 16. Report: Compliance and Amendments Committee meeting of June 18, 2013. (approximately 5 minutes) (Discussion) (attachment)

- 17. Report: Education, Outreach and Training Committee meeting of June 25, 2013. (approximately 5 minutes) (Discussion)
- 18. **Administrator's Report.** (approximately 5 minutes) (Discussion)
- 19. Announcements, Comments, Questions, and Future Agenda Items. (approximately 10 minutes) (Discussion and Action)
- 20. **ADJOURNMENT**

7.

#### **Agenda Item Information**

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at: <a href="http://www.sfbos.org/index.aspx?page=9811">http://www.sfbos.org/index.aspx?page=9811</a>

For information concerning Sunshine Ordinance Task Force please contact by e-mail <u>sotf@sfgov.org</u> or by calling (415) 554-7724.

#### **Public Comment**

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. 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 official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing;. These comments will be made a part of the official public record.

#### **Hearing Procedures**

1.	Complainant presents his/her facts and evidence	5 minutes
	Other parties of Complainant present facts and evidence	Up to 3 minutes each
2.	City responds	5 minutes
	Other parties of City respond	Up to 3 minutes each
	Above total speaking times for Complainant and City to be the same.	-
3.	Matter is with the Task Force for discussion and questions.	
4.	Respondent and Complainant presents clarification/rebuttal	3 minutes
5.	Matter is with the Task Force for motion and deliberation.	
6.	Public comment (Excluding Complainant & City response, witnesses)	Up to 3 minutes each

Vote by Task Force (Public comment at discretion of chair on new

motion and/or on new motion if vote fails.)

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

#### **Disability Access**

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

#### Know Your Rights Under the Sunshine Ordinance

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 (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sott@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <a href="http://www.sfbos.org/sunshine">http://www.sfbos.org/sunshine</a>.

#### Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

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 (Chapter 67A of the San Francisco Administrative Code).

#### **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 & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

File No. <u>13013</u>	SOTF Item No7
	CAC Item No.

#### SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST

Sunshine Ordinance Task	Date: <u>July 9, 2013</u>		
Compliance and Amendme	Date:		
CAC/SOTF	rmination d Supporting documen	ts	
	herry Date		
Completed by: Andrea Aus	Date Date	June 28, 2013	

<sup>\*</sup>An asterisked item represents the cover sheet to a document that exceeds 75 pages.

The complete document is in the file.





#### 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 San Fernicisco Public Library
Name of individual contacted at Department or Commission Luis Herre A, CTYLIBRARIA
☐ Alleged violation public records access  Alleged violation of public meeting. Date of meeting Au Library Commission
Sunshine Ordinance Section 67.15 (d)  (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.  DESPITE REPEATED REQUESTS FROM THE PUBLIC, CITY HORARIAN LUIS HERRERA HAS CONTINUED TO DENY ACCES TO MEMBERS.
OF THE PUBLIC FOR USE OF AUDIONISUAL EQUIPMENT REGULARLY PROVIDED TO "APPROVED" GROUPS, THUS ABRIDGING PUBLIC COMMENT
Do you want a public hearing before the Sunshine Ordinance Task Force? yes no no pour also want a pre-hearing conference before the Complaint Committee? yes no
(Optional) <sup>1</sup> Name Kay W Hartz, IR Address  Mr. Ray W. Hartz Jr. 839 Leavenworth St. #304 San Francisco, CA 94109-6131
Telephone No. (415) 345-9144 E-Mail Address RWHARTZTE CS&CGLOBAL, NET
Date MARCH 4, 2013    Signature     I request confidentiality of my personal information. □ yes □ no
THE THE PROPERTY OF THE TABLE TO THE TABLE TO DISCLOSURE UNDER THE

07/31/08

<sup>&</sup>lt;sup>1</sup> 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).

From: Luis Herrera (lherrera@sfpl.org)

To: rwhartzir@sbcglobal.net;

Date: Thu, February 21, 2013 2:32:38 PM

Cc: sotf@sfgov.org; acastillo@sfpl.org; sue.a.blackman@sfgov.org; Jerry.Threet@sfgov.org;

chaffeej@pacbell.net; libraryusers2004@yahoo.com;

Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
<a href="mailto:lherrera@sfpl.org">lherrera@sfpl.org</a>

From: Ray Hartz Jr [mailto:rwhartzir@sbcglobal.net]

Sent: Thursday, February 14, 2013 12:10 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty\_Threet Jerry; James Chaffee; Peter Warfield

Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your committment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.

Director San Francisco Open Government

---- Forwarded Message ----

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>

To: Luis Herrera < herrera@sfpl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeei@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; Jack Song <Jack Song@sfgov.org>

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilites in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arragement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activites, or of the acts or ommission of the body, on the basis that the performance of one or more public employees is implicated...: This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr < rwhartzjr@sbcglobal.net>

To: Luis Herrera < herrera@sfpl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeei@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Mon, January 14, 2013 12:30:16 PM

Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual

#### Ausberry, Andrea

From: Sent: Ray Hartz Jr [rwhartzjr@sbcglobal.net] Thursday, March 14, 2013 6:17 AM

To:

SOTF

Cc:

Threet, Jerry

Subject:

Fw: Audiovisual access at Library Commission meetings - reply - reply

Attachments:

[Untitled].pdf

Dear Ms. Ausberry,

Please add this email chain, and the attached response, to the file for complaint #13013, Ray Hartz v. Luis Herrera. It contains the original request, subsequent correspondance, and the final reply to my request to the City Librarian, Luis Herrera.

Thank you,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

---- Forwarded Message ----

**From:** Luis Herrera < lherrera@sfpl.org > **To:** Ray Hartz Jr < rwhartzjr@sbcglobal.net >

**Cc:** SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty\_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>

Sent: Wed, March 6, 2013 4:41:01 PM

Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings,

Luis Herrera, City Librarian

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]

Sent: Thursday, February 21, 2013 8:38 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo, sue.a.blackman@sfgov.org; SFCityAtty Threet Jerry; James Chaffee; Peter Warfield;

ethics.commission@sfgov.org; john.st.croix@sfgov.org

Subject: Re: Audiovisual access at Library Commission meetings - reply

Mr. Herrera,

I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you

do (and have been doing) for people at almost every meeting of the Library Commission. <u>You simply</u> want to deny the same access to me and others because you don't like what we say! That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr. Director, San Francisco Open Government

From: Luis Herrera <a href="mailto:lherrera@sfpl.org">lherrera@sfpl.org</a>
To: Ray Hartz Jr <a href="mailto:rwhartzjr@sbcglobal.net">rwhartzjr@sbcglobal.net</a>

Cc: SOTF <<u>sotf@sfgov.org</u>>; Almer Castillo <<u>acastillo@sfpl.org</u>>; "sue.a.blackman@sfgov.org" <<u>sue.a.blackman@sfgov.org</u>>;

SFCityAtty\_ThreetJerry <<u>Jerry.Threet@sfgov.org</u>>; James Chaffee <<u>chaffeej@pacbell.net</u>>; Peter Warfield

libraryusers2004@vahoo.com>

Sent: Thu, February 21, 2013 2:32:41 PM

Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]

Sent: Thursday, February 14, 2013 12:10 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty Threet Jerry; James Chaffee; Peter Warfield

Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your committment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr.

Director San Francisco Open Government

---- Forwarded Message ----

From: Ray Hartz Jr <rwhartzir@sbcglobal.net>

To: Luis Herrera < herrera@sfpl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>;

Peter Warfield <a href="mailto:sibraryusers2004@yahoo.com">sibraryusers2004@yahoo.com</a>; Jack Song <a href="mailto:sibraryusers2004@yahoo.com">sibraryus

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilites provided to persons/organizations of whom the Library and Library Commission approve?

The facilites in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arragement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge 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 ommission of the body, on the basis that the performance of one or more public employees is implicated...: This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr < rwhartzjr@sbcglobal.net>

To: Luis Herrera < herrera@sfpl.org>

Cc: "sue.a,blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Mon, January 14, 2013 12:30:16 PM

Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,				
Ray W. Hartz, Jr.			•	
Director, San Francisco Open Government				
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Official SFPL Use Only

#### Official SFPL use only

#### Ausberry, Andrea

From: Sent:

Ray Hartz Jr [rwhartzjr@sbcglobal.net] Wednesday, June 26, 2013 3:37 PM

To:

: SOTF

Subject:

Fw: Audiovisual access at Library Commission meetings - reply - reply

Attachments:

[Untitled].pdf

Dear Ms. Ausberry,

### Please include the following email chain in the file for Case #13013, Ray Hartz v Luis Herrera, City Librarian.

I would like the Task Force members to note that I made it clear that I was not expecting special treatment, but was expecting equal treatment.

I offered to provide documents in Microsoft PowerPoint, which is what I believe all of their "invited" participants use, and that option was ignored in his response.

Mr. Herrera wants to make this seem like an impossible request by claiming a need for huge expenditures, which is not the case!

He only wants to deny access based upon "viewpoint descrimination," allowing those he invites (read approves) access and denying the same to those who chose to attend (read disapproves.)

This is not only a clear violation of the Sunshine Ordinance, but I believe, the Brown Act.

Mr. Herrera has already been found in violation for withholding public records by the Task Force and referred to the Board of Supervisors. This is truly a "pattern of behavior" designed to censor and/or abridge public comment!

Sincerely,

Ray W. Hartz, Jr.
Director. San Francisco Open Government

---- Forwarded Message -----

From: Luis Herrera < herrera@sfpl.org>
To: Ray Hartz Jr < rwhartzir@sbcglobal.net>

Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty\_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org"

<ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>

Sent: Wednesday, March 6, 2013 4:40 PM

Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

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From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]

Sent: Thursday, February 21, 2013 8:38 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty Threet Jerry; James Chaffee; Peter Warfield;

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From: Luis Herrera < <a href="mailto:lherrera@sfpl.org">lherrera@sfpl.org</a>
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Ce: SOTF < sotf@sfgov.org >; Almer Castillo < acastillo@sfpl.org >; "sue,a.blackman@sfgov.org " < sue.a.blackman@sfgov.org >; - sue.a.blackman@sfgov.org >;

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Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]

Sent: Thursday, February 14, 2013 12:10 PM

To: Luis Herrera

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Ray W. Hartz, Jr. Director, San Francisco Open Government From: Ray Hartz Jr <rwhartzir@sbcglobal.net>

To: Luis Herrera < lherrera@sfpl.org>

 $\textbf{Cc: "} \underline{\text{sue.a.blackman@sfgov.org"}}; \underline{\text{SOTF}} \underline{\text{sotf@sfgov.org}}; \underline{\text{James Chaffee}}\underline{\text{@pacbell.net}}; \underline{\text{SOTF}} \underline{\text{sotf@sfgov.org}}; \underline{\text{James Chaffee}}\underline{\text{@pacbell.net}}; \underline{\text{SOTF}} \underline{\text{Sotf@sfgov.org}}; \underline{\text{James Chaffee}}\underline{\text{@pacbell.net}}; \underline{\text{James Chaffee}}\underline{\text{James Chaffee}}\underline{\text{@pacbell.net}}; \underline{\text{James Chaffee}}\underline{\text{James Chaffee}}\underline{\text{@pacbell.net}}; \underline{\text{James Chaffee}}\underline{\text{James Chaffee}}\underline{\text{Ja$ 

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Sincerely,

Ray W. Hartz, Jr. Director, San Francisco Open Government

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March 5, 2013

Mr. Ray Hartz 839 Leavenworth Street, Apt. 304 San Francisco, CA 94109-6131 Via email: rwhattzir@sbcglobal.net

Dear Mr. Hartz,

On January 14, 2013, you requested that the San Francisco Public Library (SFPL) allow members of the public to use audiovisual aids to support their public comments. You assert that SFPL denies the public access to the audiovisual aids in an effort to abridge public criticism. You also assert that such action violates San Francisco Administrative Code Section 67.15, which prohibits a policy body from "abridg[ing] or prohibit[ing] public criticism of the policy, procedures, programs or services of the City....."

I respectfully disagree. The Commission does not discriminate on the basis of viewpoint in allowing members to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Library staff have explored options to accommodate your request. We looked at providing the public with a basic transparency device that uses an overhead projector. However, this option was not viable as the projector could not project the image on the auditorium stage screen to allow the public and commissioners to view. The only option available for audio visual presentations at the SFPL Commission meetings would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public lectern. This option would require the fibrary department to incur additional expense and resources. Specifically, we would need to enlist the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage to the public lectern, where members of the public would place a laptop or use a jump drive to connect to the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would also be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000. The Library Department does not have the resources to incur these additional costs.

Currently, the Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects as part of the Bond Managers report, other City departments or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentations that the Commission has invited them to make for items that the Commission has placed on its agenda. However, SFPL staff have expended resources to load the materials into the Library's information processing system ahead of time. Where the Commission invites private parties to make presentations, SFPL expends its resources as necessary to effect those presentations. Otherwise, the department uniformly declines to allow members of the public, without regard to their viewpoint, to connect their laptops or external devices to the department's audiovisual facilities because of the additional expense and resources discussed above.

Sincerely

Luis Herrera City Librarian



# SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO DRAFT MINUTES

Hearing Room 406 City Hall, 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

July 9, 2013 – 4:30 PM

#### **Special Meeting**

Members: Kitt Grant (Chair), Louise Fischer (Vice-Chair), Richard Knee, Allyson Washburn, David Pilpel, David Sims, Todd David, Chris Hyland, Bruce Oka

1. Call to Order, Roll Call, and Agenda Changes.

The meeting was called to order at 4:38 p.m. There was a quorum.

Chair Grant announced a request for File No. 13012 to be continued by the Complainant.

Member Washburn, seconded by Member Knee moved to accept the Complainant's request for continuance; CONTINUE file No. 13012 to August 7, 2013.

There were no speakers. The motion PASSSED without objection.

2. **File No. 12007:** The Education, Outreach and Training Committee has referred File No. 12007, the Library Users Association against Supervisor Campos for responding late to an immediate disclosure request and redacting information from Bernal Heights Branch Library Mural related documents inappropriately.

Member Knee, seconded by Member David moved to CONTINUE the matter to August 7, 2013.

Speakers: Ray Hartz expressed that Task Force members should be informed of all supporting documents in order to make proper determinations; Allen Grossman expressed support of the motion.

#### The motion PASSED by the following vote:

Ayes: 9 - Knee, Washburn, Pilpel, Sims, Hyland, Oka, David, Fischer, Grant

3. **File No. 13005:** Complaint filed by Paula Datesh against the Arts Commission for allegedly failing to respond to an Immediate Disclosure Request for records pertaining to the operations of the Arts Commission.

Member David, seconded by Member Knee, moved to find jurisdiction.

There were no speakers. The motion PASSSED without objection.

Paula Datesh (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Howard Lazar, Arts Commission (Respondent), provided an overview of the Arts Commission's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed. Complainant and Respondent responded to questions raised throughout the discussion. Respondent provided a rebuttal and stating they were not in violation of the ordinance. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Pilpel, seconded by Member Knee, moved to find the Arts Commission in violation of S.O. Secs. 67.25(a) for failure to respond in a timely matter; 67.21(e) for failure to comply with the records request; referral to Education, Outreach and Training Committee.

Speakers: Diane expressed support of the complainant.

#### The motion PASSED by the following vote:

Ayes: 9 - Knee, Washburn, Pilpel, Sims, David Hyland, Oka, Fischer, Grant

Recess 6:25 - 6:37 p.m.

#### 4. Public Comment.

**Speakers:** Ray Hartz expressed concern with the bias the Chair of the Education, Outreach and Training Committee displays in favor of City agencies; Allen Grossman expressed concern with the required six vote of the Sunshine Ordinance Bylaws for the approval of all substantive matters; Paula Datesh announced her street artist certification was revoked; Peter Warfield expressed concern with the vacancies of the Task Force; Diane expressed concern with the Office of Citizen Compliant not responding to records requested.

\*The following information is provided by a speaker, pursuant to Administrative Code Section 67.16. The content is neither generated by, nor subject to approval or verification of accuracy by, the Sunshine Ordinance Task Force.

Allen Grossman submitted the following additional information for Public Comment as follows:

Agenda Item (4) Public Comment (150 words):

<u>Allen Grossman's 150 Word Summary for inclusion in body of SOTF – JULY 9, 2013</u> Meeting Minutes

Yesterday, the California Supreme Court decided a CPRA case relevant to this body's adoption last year of the six vote "minimum" rule. The Court placed considerable weight on Prop 59's statutory requirement that laws related to public access must be broadly construed.

This decision is significant not because the two Deputy City Attorneys who advised this body on the six vote rule did not know that Prop 59 requirement, but because they never mentioned it in their legal Memoranda construing the City Charter provision involved. This body voted to adopt the six-vote minimum rule on the advice of those two lawyers.

As a result of their lack of professionalism and divided loyalty, those two Deputy City Attorneys deprived this body and the complainants who seek its help of the public's constitutionally protected right of access, which has been and will continue to be compromised to their detriment.

5. **File No. 13011:** Complaint filed by Paula Datesh against the Arts Commission for allegedly not providing documents relating to Evelyn Russell, former Arts Commission Secretary.

Member Knee, seconded by Member Oka, moved to find jurisdiction.

There were no speakers. The motion PASSSED without objection.

Paula Datesh (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Howard Lazar, Arts Commission (Respondent), provided an overview of the Arts Commission's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed; the Task Force requested, the Complainant provide her initial request made in March for the Task Force to make a determination. Complainant and Respondent responded to questions raised throughout the discussion. Respondent provided a rebuttal and stating they were not in violation of the ordinance. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Knee, seconded by Member Oka moved to CONTINUE the matter to August 7, 2013.

Speakers: None.

The motion PASSED by the following vote:

Ayes: 9 - Knee, Washburn, Pilpel, Sims, David Hyland, Oka, Fischer, Grant

6. **File No. 13012:** Complaint filed by Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge.

Member Washburn, seconded by Member Knee moved to accept the Complainant's request for continuance; CONTINUE file No. 13012 to August 7, 2013.

There were no speakers. The motion PASSSED without objection.

7. **File No. 13013:** Complaint filed by Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment.

Member Washburn, seconded by Member Fischer, moved to find jurisdiction.

There were no speakers. The motion PASSSED without objection.

Ray Hartz, Jr. (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Sue Blackman, Library Commission Secretary and Roberto Lombardi, Library Logistics (Respondents), provided an overview of the City Librarian's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed. Complainant and Respondent responded to questions raised throughout the discussion. Respondents waived rebuttal. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Sims, seconded by Member Oka moved to find the Library in violation of S.O. Sec. 67.15(a)(d) for abridging public comment by not providing equal access of audio visual equipment to invited parties and the public; referral to the Compliance and Amendments Committee.

**Speakers:** Male Speaker expressed opposition to the Library denying equal access to equipment; Paula Datesh expressed support of the motion; Diane expressed appreciation of the Complainant bringing this issue to the Task Force; Peter Warfield stated the Library has the budget to accommodate the public's use of audio visual equipment.

#### The motion PASSED by the following vote:

Ayes: 8 - Knee, Washburn, Sims, David, Hyland, Oka, Fischer, Grant Noes: 1 - Pilpel

8. **File No. 13014:** Complaint filed by Ray Hartz Jr. against Ben Rosenfield, City Controller for allegedly failing to provide filings by the City Librarian, Luis Herrera of gifts from The Friends of the San Francisco Public Library.

Member Pilpel, seconded by Member Knee, moved to find jurisdiction.

There were no speakers. The motion PASSSED without objection.

Ray Hartz, Jr. (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Monique Zmuda, Deputy Controller (Respondent), provided an overview of the City Controller's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed. Complainant and Respondent responded to questions raised throughout the discussion. Respondent waived rebuttal. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Pilpel, seconded by Member Oka moved to find the City Controller in violation of S.O. Sec. 67.21(b) for failure to comply with request within ten days following receipt of the request; S.O. Sec. 67.25(a) for failure to respond in a timely matter; referral to the Education, Outreach and Training Committee for analysis of the City Controller's processes.

Speakers: None.

#### The motion PASSED by the following vote:

Ayes: 9 - Knee, Washburn, Pilpel, Sims, David, Hyland, Oka, Fischer, Grant

9:03 - 9:13 pm Recess

(Member Hyland was noted absent at 9:13 p.m.)

9. **File No. 13015:** Complaint filed by William Ledford against the Office of the City Attorney for allegedly failing to process and complete an immediate disclosure request.

Member Knee, seconded by Member David, moved to find jurisdiction.

There were no speakers. The motion PASSSED without objection.

William Ledford (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers who offered facts and evidence in support of Complainant. Jack Song, Deputy Communications Director, Public Information (Respondent), provided an overview of the Office of the City Attorney's defense and requested the Task Force to dismiss the complaint. There were no speakers who offered facts and evidence in support of Respondent. A question and answer period followed. Complainant and Respondent responded to questions raised throughout the discussion. Respondent provided a rebuttal stating the Office of the City Attorney was not in violation of the ordinance. Complainant provided a rebuttal and again requested the Task Force find violations.

Member Washburn, seconded by Member Knee moved to find the City Attorney in violation of S.O. Sec. 67.21(b) for failure to comply with request within ten days following receipt of the request.

**Speakers:** Ray Hartz expressed the complainant's only option was to go through the City Attorney for the records requested due to litigation; Peter Warfield expressed concern of the City Attorney's claim not to have possession of the records requested by the Complainant.

#### The motion FAILED by the following vote:

Ayes: 1 - Washburn

Noes: 7 - Knee, Pilpel, Sims, David, Oka, Fischer, Grant

Absent: 1 - Hyland

#### MATTER IS CONCLUDED.

10. Approval of Minutes from the January 16, 2013, Special Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendizing the minutes first on the agenda.

The motion PASSED without objection.

11. Approval of Minutes from the February 6, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE items 10 through 15 to August 7, 2013.

**Speaker:** Peter Warfield suggested agendizing the minutes first on the agenda.

The motion PASSED without objection.

12. Approval of Minutes from the March 6, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE items 10 through 15 to August 7, 2013.

**Speaker:** Peter Warfield suggested agendizing the minutes first on the agenda.

The motion PASSED without objection.

13. Approval of Minutes from the April 3, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE items 10 through 15 to August 7, 2013.

**Speaker:** Peter Warfield suggested agendizing the minutes first on the agenda.

The motion PASSED without objection.

#### 14. Approval of Minutes from the May 1, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendizing the minutes first on the agenda.

The motion PASSED without objection.

#### 15. Approval of Minutes from the June 5, 2013, Regular Meeting.

Member Pilpel, seconded by Member Knee, moved to CONTINUE items 10 through 15 to August 7, 2013.

Speaker: Peter Warfield suggested agendizing the minutes first on the agenda.

The motion PASSED without objection.

#### 16. Report: Compliance and Amendments Committee meeting of June 18, 2013.

Report was given by Member Washburn, Chair of the Compliance and Amendments Committee, on the July 18, 2013 meeting on behalf of the Compliance and Amendments Committee. In partnership the Chairs of the committee and the Task Force will send a letter to the Ethics Commission in regards to File No. 12058, Dominic Maionchi against the Recreation and Parks Department.

Speakers: Ray Hartz expressed support of the letter to Ethics Commission; Peter Warfield expressed support of the letter to Ethics Commission.

#### 17. Report: Education, Outreach and Training Committee meeting of June 25, 2013.

Report was given by Member Pilpel, Chair of the Education, Outreach and Training Committee, on the June 25, 2013, meeting on behalf of the Education, Outreach and Training Committee.

Member Knee expressed disagreement with Chair Pilpel presiding over Complaint No. 12050, Ray Hartz against the Clerk of the Board, with the intention to conclude the matter and not abiding to the Order of Determination of the Task Force.

Member David stated he would recuse himself from all future complaints involving Ray Hartz while Member Pilpel is Chair of the Education, Outreach and Training Committee.

Speakers: Ray Hartz urged the Task Force to listen to the audio of the June 25, 2013, Education, Outreach and Training Committee meeting to hear Chair Pilpel readjudicate complaints and show biased against complainants; Peter Warfield expressed as Chair of

the Education, Outreach and Training Committee and as a member of the Task Force, Member Pilpel is incapable of being impartial.

(Member David was noted absent at 10:53 p.m.)

#### 18. Administrator's Report.

Report was given by Andrea Ausberry, Sunshine Ordinance Task Force Administrator, on behalf of the Sunshine Ordinance Task Force Office.

Speakers: None.

# 19. **Announcements, Comments, Questions, and Future Agenda Items.** Member Fischer wished Member Oka Happy Birthday.

Wiemoer Tischer wished Wemoer Oka Happy Diffiday.

Speakers: Ray Hartz expressed the consistency of how the title complaints are worded can affect the Task Force's determinations; Peter Warfield expressed concern of which Task Force member will represent the Task Force for Ethic Commission hearings.

#### 20. ADJOURNMENT

Member Knee, seconded by Member Pilpel, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Task Force adjourned at 10:57 p.m.

#### **Agenda Item Information**

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#### **Public Comment**

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. 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 official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing;. These comments will be made a part of the official public record.

#### **Hearing Procedures**

1.	Complainant presents his/her facts and evidence	5 minutes
	Other parties of Complainant present facts and evidence	Up to 3 minutes each
2.	City responds	5 minutes
	Other parties of City respond	Up to 3 minutes each
	Above total speaking times for Complainant and City to be the same.	•
3.	Matter is with the Task Force for discussion and questions.	
4.	Respondent and Complainant presents clarification/rebuttal	3 minutes
5.	Matter is with the Task Force for motion and deliberation.	
6.	Public comment (Excluding Complainant & City response,	Up to 3 minutes each
	witnesses)	•
7.	Vote by Task Force (Public comment at discretion of chair on new	

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

motion and/or on new motion if vote fails.)

#### **Disability Access**

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The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

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#### **Know Your Rights Under the Sunshine Ordinance**

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 (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sott@sfgov.org.

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#### Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

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#### 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 & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics



# SUNSHINE ORDINANCE TASK FORCE Compliance and Amendments Committee CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 408 City Hall, 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

September 17, 2013 – 4:00 P.M.

#### Regular Meeting

**Members:** Allyson Washburn (Chair), Richard Knee, Kitt Grant

- 1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES
- 2. **Adoption of August 20, 2013, Regular Meeting Minutes.** (Discussion and Action) (attachment) (approximately 5 minutes)
- 3. **File No. 13013:** Hearing on the status of the Order of Determination of Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. (Discussion and Action) (attachment) (approximately 30 minutes)
- 4. **Public Comment:** Members of the public may address the Compliance and Amendments Committee on matters that are within Sunshine Ordinance Task Force's jurisdiction but not on today's agenda. (No Action). **Public Comment shall be taken after action is taken on the last hearing item or half an hour after the meeting convenes.**
- 5. Administrator's Report. (Discussion and Action) (approximately 5 minutes)
- 6. Announcements, Comments, Questions, and Future Agenda Items. (No Action)
- 7. **ADJOURNMENT**

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2.	City responds	5 minutes
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3.	Matter is with the Task Force for discussion and questions.	
4.	Respondent and Complainant presents clarification/rebuttal	3 minutes
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7.	Vote by Task Force (Public comment at discretion of chair on new motion and/or on new motion if vote fails.)	

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	SUNSHINE ORDINANCE TA: AGENDA PACKET CONTENT	
Sunshine O	rdinance Task Force (SOTF)	Date:
Compliance	and Amendments Committee (CAC)	Date: September 17, 2013
CAC/SOTE	Memorandum Order of Determination Complaint and Supporting document Respondent's Response Minutes	ts
OTHER		

File No.

13013

SOTF Item No. CAC Item No.

Date 9/12//3

Date

VYoung

Completed by:\_\_ Completed by:\_\_

<sup>\*</sup>An asterisked item represents the cover sheet to a document that exceeds 75 pages. The complete document is in the file.

CITY AND COUNTY OF SAN FRANCISCO



SUNSHINE ORDINANCE TASK FORCE

## ORDER OF DETERMINATION August 19, 2013

DATE THE DECISION ISSUED July 9, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013).

#### **FACTS OF THE CASE**

Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

#### **COMPLAINT FILED**

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

#### HEARING ON THE COMPLAINT

On July 9, 2013, Complainant, Mr. Hartz appeared before the Task Force and presented his claim. Respondents Sue Blackman, Library Commission Secretary and Roberto Lombardi, Library Logistics presented the Library's defense.

The issue in the case is whether the Agency violated Section 67.15 of the Ordinance.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Complainant Mr. Hartz to be persuasive and finds that Sections 67.15(a) and 67.15(d) to be applicable in this case. The Task Force does not find testimony provided by the Library persuasive to this case.

#### **DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. The Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with this Order.

#### CITY AND COUNTY OF SAN FRANCISCO

#### SUNSHINE ORDINANCE TASK FORCE

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 9,

2013 by the following vote: (Sims/Oka)

Ayes: Knee, Washburn, Sims, David, Hyland, Oka, Fischer, Grant

Noes: Pilpel

Kitt Grant, Chair

Mid Grant

Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney

Ray Hartz, Jr., Complaint

Sue Blackman, Library Commission Secretary, Respondent

Roberto Lombardi, Library Logistics, Respondent

#### CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA City Attorney

#### OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914 E-MAIL: jery.threet@sfgov.org

#### MEMORANDUM

July 5, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013)

#### **COMPLAINT**

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

#### COMPLAINANT FILES COMPLAINT:

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

#### JURISDICTION

The Library clearly is a City Department and the Library Commission is a charter policy body. The Task Force therefore has jurisdiction to hear a public meetings complaint.

#### APPLICABLE STATUTORY SECTION(S):

• Section 67.15 governs the public comment at meetings of policy bodies.

#### APPLICABLE CASE LAW:

None.

#### ISSUES TO BE DETERMINED

Complainant: Complainant alleges that the Librarian violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech. Complainant provides copies of emails to support his complaint.

Those emails show that on January 14, 2013, Complainant requested from the Librarian public access to Library audiovisual equipment for use during public comment at Commission meetings, noting that such equipment was used by groups that Complainant described as being approved by the Library. The 1/14/13 email also argued that denying access to the public to such

#### Memorandum

DATE:

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RE:

Hartz v. Librarian (13013)

equipment would violated Section 67.15(d) of the Ordinance by abridging public comment. Complainant submitted another email with similar requests and arguments to the Librarian from January 24, 2013.

Complainant submitted a third email to Herrera dated February 14, 2013 in which it was noted that the Librarian had promised to "look into" the request, but that Complainant had never heard back. He also submitted an email response from the Librarian dated February 21, 2013, in which Herrera stated that Library staff continued to "look into the feasibility of making the necessary changes to the media set up at Koret Auditorium [] in order to accommodate your request."

Respondent: On March 5, 2013, the Librarian responded by letter to Complainant's request. In the 3/5/13 letter, the Librarian disputes Complainant's assertion that the Library violates the public meeting laws by failing to provide public access to Library audiovisual equipment. The letter asserts that no provision of the Ordinance or of the Brown Act requires that the Library provide such access. In particular, the letter asserts that Section 67.15 of the Ordinance does not prescribe any specific technological means by which the public must be given access to public comment. In addition, the letter asserts that the Library does not discriminate on the basis of viewpoint of members of the public making public comment.

The 3/5/13 letter also describes the efforts made to date by Library staff re the feasibility of providing audiovisual aids to members of the public for comment at Commission meetings, concluding that many options involved costs that the Library cannot absorb. The letter also notes that those currently allowed access to Library computers to use audiovisual equipment include only staff and those invited by the Library Commission or staff to make an official presentation to the Commission regarding an item on the Commission agenda. Otherwise, the Librarian asserts, the Commission does not allow access to its computers by members of the public, without regard for their viewpoint.

#### QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:

- Does Complainant assert that the Commission may not invite private parties to make official presentations on items on the agenda without providing equal time and access to members of the public who wish to respond to such presentations?
- Does Complainant assert that any member of the public making public comment on an item, as distinct from making an official presentation, is given access to Library audiovisual equipment in making that public comment?

#### LEGAL ISSUES/LEGAL DETERMINATIONS:

• Has the Librarian violated Section 67.15 of the Ordinance?

#### 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:

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RE:

Hartz v. Librarian (13013)

# CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)

#### 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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)





# 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 San Francisco Public LIBRARY
Name of individual contacted at Department or Commission Luis thereen, CTYLIBEARIA
Alleged violation public records access  Alleged violation of public meeting. Date of meeting Au Library Commission.
Sunshine Ordinance Section (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.
DESPITE REPEATED REQUESTS FROM THE PUBLIC, CITY HORARIAN
LUIS HERRERA HAS CONTINUED TO DENY ACCES TO MEMBERS
OF THE PUBLIC FOR USE OF AUDIONISUAL EQUIPMENT REGULARLY
PROVIDED TO "APPROVED" GROUPS, THUS ABRIDGING PUBLIC COMMENT
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  KAY W HARTZ, IR  Address  Mr. Ray W. Hartz Jr.  839 Leavenworth St. #304 San Francisco, CA 94109-6131
Telephone No. (415) 345-9144 E-Mail Address RW/ARTZJECSBCQLOBAL, WET
Date MARCH 4, 2013 Ray WHONK
I request confidentiality of my personal information.   yes Signature  no
NOTICE: PERSONAL INFORMATION THAT YOU PROVIDE MAY BE SUBJECT TO DISCLOSURE UNDER THE

07/31/08

I 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).

From: Luis Herrera (lherrera@sfpl.org)

To: rwhartzir@sbcglobal.net;

Date: Thu, February 21, 2013 2:32:38 PM

Cc: sotf@sfgov.org; acastillo@sfpl.org; sue.a.blackman@sfgov.org; Jerry.Threet@sfgov.org;

chaffeej@pacbell.net; libraryusers2004@yahoo.com;

Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org

From: Ray Hartz Jr [mailto:rwhartzir@sbcglobal.net]

Sent: Thursday, February 14, 2013 12:10 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty Threet Jerry; James Chaffee; Peter Warfield

Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

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Ray W. Hartz, Jr.

Director San Francisco Open Government

---- Forwarded Message ----

From: Ray Hartz Jr <r whartzir@sbcglobal.net>

To: Luis Herrera < !herrera@sfpl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; Jack Song <Jack Song@sfgov.org>

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

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Sincerely,

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Director, San Francisco Open Government

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Sent: Mon, January 14, 2013 12:30:16 PM

Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

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#### Ausberry, Andrea

From:

Ray Hartz Jr [rwhartzjr@sbcglobal.net]

Sent:

Thursday, March 14, 2013 6:17 AM

To:

SOTF

Cc:

Threet, Jerry

Subject:

Fw: Audiovisual access at Library Commission meetings - reply - reply

Attachments:

[Untitled].pdf

Dear Ms. Ausberry,

Please add this email chain, and the attached response, to the file for complaint #13013, Ray Hartz v. Luis Herrera. It contains the original request, subsequent correspondence, and the final reply to my request to the City Librarian, Luis Herrera.

Thank you,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

---- Forwarded Message ----

From: Luis Herrera < lherrera@sfpl.ora> To: Ray Hartz Jr <rwhartzjr@sbcglobal.net>

Cc: SOTF <sotf@sfqov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfqov.org" <sue.a.blackman@sfgov.org>; SFCityAtty\_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeei@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>

Sent: Wed, March 6, 2013 4:41:01 PM

Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

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Sent: Thursday, February 14, 2013 12:10 PM

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Ce: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty\_Threet Jerry; James Chaffee; Peter Warfield

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I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,		
Ray W. Hartz, Jr. Director, San Francisco Open Government		
Official SFPL Use Only		
	Official SFPL use only	

Official SFPL Use Only

#### Official SFPL use only

## Ausberry, Andrea

From: Sent:

Ray Hartz Jr [rwhartzjr@sbcglobal.net] Wednesday, June 26, 2013 3:37 PM

To:

Subject:

SOTF
Fw: Audiovisual access at Library Commission meetings - reply - reply

Attachments:

[Untitled].pdf

Dear Ms. Ausberry,

Please include the following email chain in the file for Case #13013, Ray Hartz v Luis Herrera, City Librarian.

I would like the Task Force members to note that I made it clear that I was not expecting special treatment, but was expecting equal treatment.

I offered to provide documents in Microsoft PowerPoint, which is what I believe all of their "invited" participants use, and that option was ignored in his response.

Mr. Herrera wants to make this seem like an impossible request by claiming a need for huge expenditures, which is not the case!

He only wants to deny access based upon "viewpoint descrimination," allowing those he invites (read approves) access and denying the same to those who chose to attend (read disapproves.)

This is not only a clear violation of the Sunshine Ordinance, but I believe, the Brown Act.

Mr. Herrera has already been found in violation for withholding public records by the Task Force and referred to the Board of Supervisors. This is truly a "pattern of behavior" designed to censor and/or abridge public comment!

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

---- Forwarded Message -----

From: Luis Herrera <a href="mailto:rg">herrera@sfpl.org</a>
To: Ray Hartz Jr <a href="mailto:rwhartzir@sbcglobal.net">rwhartzir@sbcglobal.net</a>

Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty\_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>

Sent: Wednesday, March 6, 2013 4:40 PM

Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

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Sent: Thursday, February 21, 2013 8:38 PM

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March 5, 2013

Mr. Ray Hartz 839 Leavenworth Street, Apt. 304 San Francisco, CA 94109-6131 Via email: rwhartzir@sbeglobal.net

Dear Mr. Hartz,

On January 14, 2013, you requested that the San Francisco Public Library (SFPL) allow members of the public to use audiovisual aids to support their public comments. You assert that SFPL denies the public access to the audiovisual aids in an effort to abridge public criticism. You also assert that such action violates San Francisco Administrative Code Section 67.15, which prohibits a policy body from "abridg[ing] or prohibit[ing] public criticism of the policy, procedures, programs or services of the City...,"

I respectfully disagree. The Commission does not discriminate on the basis of viewpoint in allowing members to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Library staff have explored options to accommodate your request. We looked at providing the public with a basic transparency device that uses an overhead projector. However, this option was not viable as the projector could not project the image on the auditorium stage screen to allow the public and commissioners to view. The only option available for audio visual presentations at the SFPL Commission meetings would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public lectern. This option would require the library department to incur additional expense and resources. Specifically, we would need to enlist the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage to the public lectern, where members of the public would place a laptop or use a jump drive to connect to the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would also be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000. The Library Department does not have the resources to incur these additional costs.

Currently, the Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects as part of the Bond Managers report, other City departments or the Friends of the Library may have, on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentations that the Commission has invited them to make for items that the Commission has placed on its agenda. However, SFPL staff have expended resources to load the materials into the Library's information processing system ahead of time. Where the Commission invites private parties to make presentations, SFPL expends its resources as necessary to effect those presentations. Otherwise, the department uniformly declines to allow members of the public, without regard to their viewpoint, to connect their laptops or external devices to the department's audiovisual facilities because of the additional expense and resources discussed above.

Sincerely,

Luis Herrera City Librarian September 12, 2013

Members, Sunshine Ordinance Task Force Via email sotf@sfgov.org

Re: Complaint #13013, Ray Hartz v. City Librarian Luis Herrera Complaint #13056, Ray Hartz v. City Librarian Luis Herrera

Dear Chairman Grant and Task Force Members:

This letter responds to the Sunshine Ordinance Task Force's (SOTF) ruling at its July 9, 2013 meeting regarding Complaint #13013, Ray Hartz v. City Librarian Luis Herrera and Complaint #13056, Ray Hartz v. City Librarian Luis Herrera.

The Order of Determination was issued on August 19, 2013 ruling that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. It further states that the Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with the Order.

The Library Commission met on August 15, 2013 and voted 6-0 to not allow the use of audio visual equipment for public comment because allowing members of the public to use audio visuals during public comment would require SFPL to expend significant resources to make the necessary accommodations to modify the technology set up that SFPL uses. The Commission made it clear that the public could bring printed copies of presentations to the Commission and have them available at the back of the room. (See attached Draft Library Commission Minutes for August 15, 2013).

The Library explored various options that would allow the public to use the audio visuals during public comment, including providing the public with a basic transparency device that uses an overhead projector. This option was not viable as the projector could not project the image on the auditorium screen to allow the public and commission to view. The only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public. This option would require the Library to retain the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000, which the Library does not have.

The Commission does not discriminate on the basis of viewpoint in allowing members of the public to exercise their right to address public comments to the Commission. The Library Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect its audio visual equipment. This policy is not based on viewpoint. Additionally, the City Attorney's Office has advised the Commission that neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15 which specifically addresses the right to public comments in San Francisco does not prescribe the method, means or mode of technology that SFPL must allow the public to use during public comment.

We hope that this resolves the Task Force's concerns about this matter. Thank you for your time and consideration.

Sincerely,

Sue Blackman Library Commission Secretary/Custodian of Records

cc: Luis Herrera, City Librarian
Ray Hartz
Jewelle Gomez, Library Commission President

#### **Draft Library Commission Minutes August 15, 2013**

#### AGENDA ITEM 2. USE OF AUDIO VISUAL EQUIPMENT BY THE PUBLIC

Luis Herrera, City Librarian, referred to a memo in the Commissioner's packet and explained the background of the item. He said there is also a letter to Mr. Ray Hartz dated March 5, 2013 and a copy of Section 67.15 Public Testimony of the Sunshine Ordinance. He said Mr. Hartz had requested that members of the public be able to use audio visual aids to support public comment. His request was declined by the Library and he subsequently filed a complaint with the SOTF. He said Mr. Hartz asserts that the Library denies public access to audiovisual aids to abridge public criticism and he also asserts that such action violates San Francisco Administrative Code Section 67.15. He said the Library did explore options to accommodate his request including providing the public with a basic transparency device that uses an overhead projector. He said this option was not feasible as the projector could not project the image on the auditorium screen to allow the public and commission to view. He said the only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the Library's information technology set up to allow the public to download their presentations from a laptop. He said this option would require expenditure of additional expenses and resources. He said engineering staff and a construction contractor would need to modify the cable set up, including running cables under the stage podium and into the projection room. He said the Library conferred with the Department of Public Works to ensure proper ADA setup and the preliminary cost estimate range up to \$40,000 which is not included in this year's budget. He said the Library Commission only allows SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. He said for these reasons Mr. Hartz' request was declined. He said the SOTF heard the complaint on July 9 and found the Library in violation of Administrative Code Section 67.15 for abridging public comment by not providing access to the audiovisual equipment. He said they referred the matter to the SOTF Compliance and Amendments Committee. He said the item before you will give the Commission the opportunity to discuss and possibly take action on this matter. The Commission may choose to allow members of the public to use audio visuals during public comment by supporting additional expenses and resources. He said the City Attorney has opined that whether the Library provides the public with access to the audio visual equipment is a policy call because neither the Brown Act nor the Sunshine Ordinance prescribes the method, means, or mode of technology that SFPL must allow the public to use during public comment.

#### **Public Comment**

An anonymous citizen said this is a situation where Stacey Aldrich the State Librarian appeared before you last February and she described how communication is becoming more digital and visual and it is necessary in order to allow full discourse. He said you have in front of you a copy of the law and two letters from the City Librarian. He asked where are the letters from Ray Hartz, where is the complaint, where are the deliberations from the Sunshine Ordinance Task Force or the SOTF's Order of Determination. He said you have none of that

in front of you nor do you have anything from the City Attorney that supports Luis Herrera's characterization of their opinion. He said this is a basic right. He said the law doesn't say that you have to provide visual access. He said what the law says is that you have to provide equality and equal treatment in a public forum. He said this is a situation where this Library Commission can just say no. He said you have not been given a draft resolution so that you can see what it would look like to approve or reject. He said you have not been given any of the real information about why this is not only good policy but the law and why the SOTF approved it. He said the Commission should simply say that you are going to reject this one-sided abuse of the Commission's intelligence and approve the citizen's access to the graphics.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. The mot de Coulter is wonderfully appropriate now. The State Librarian Stacey Aldrich appeared before you in February, 2012, and described how communication is becoming more digital and visual, and that is necessary to modern discourse. You have two letters from the City Librarian. Where are the letters from Mr. Hartz, the Sunshine complaint, the Sunshine Ordinance Task Force's deliberations and determination, or confirmation of the City Attorney's opinion? The law doesn't say you have to provide visual access. It says you have to provide equal treatment in a public forum. You have not even been given a draft resolution to approve. You have no information on why the Sunshine Task Force approved it. Just say, No. You can reject this one-sided abuse of your intelligence and approve the citizen's access to graphics.

Ray Hartz, Director San Francisco Open Government, said he knows what to expect because there will be claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. He said what he submitted was two PowerPoint slides and you will see in your packets that there are two or three presentations all done in the same format and that is all it takes to include his input. He said you don't have to spend \$40,000, if you have a security risk print the documents out and scan them with your own equipment. He said these are two quotes from the authors Frank Herbert and Upton Sinclair. He said if that isn't censorship, I don't know what is. He said as he said at the SOTF hearing, all he is asking for is equal treatment. He said include his Microsoft PowerPoint slides just as you do for those of whom you approve. He said perhaps it would be more accurate to say for those who approve of you. He said it is bad enough that you have to let us speak and you can't censor what we say. He said your fear is that we would be even more effective. He said he knows there is one question that will not be asked or if it is asked it will not be answered. He said why does the Commission want so badly to restrict what we have to say. He said the Commission is afraid we will show charts with real numbers showing that out of \$53 Million what the library got was 6% or 8% of the money. He said we have a group that raises money for the library but really raised the money to spend on themselves.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

How I expect this "discussion" to go: claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. "Straw men" set up to allow you to "pretend to discuss" restrictions on public comment. As I said at the SOTF hearing: all I'm asking for is equal treatment! Include my Microsoft PowerPoint slides just as you do for those who you approve. Perhaps it would be more accurate to say for those who approve of you? It's bad enough that you have to let us speak and you can't censor what we say! Your fear is that we would be even more effective! I know there is one question that will not be asked, or if it is will not be answered: why do you want so badly to restrict what we say?

Peter Warfield, Library Users Association, said this is both a sad moment and an opportunity for this Library Commission to show some level of responsibility and of legal behavior. He said he expects no action and very little real discussion. He said the SOTF heard Mr. Hartz' complaint and the Library's defense of its actions in refusing to provide PowerPoint displays for the public. He said the Library brought their head of Facilities and the Library was practically laughed out of the room. He said the Task Force members were openly skeptical and scoffing and counting reasons given by the Library. He said the request Mr. Hartz has made is for the same treatment as other people that you have presenting including others like the Friends that have no connection with the Library. He said there would be no requirement whatsoever for any change of equipment. He said Mr. Hartz pointed out that if you are worried about security issues you can simply print out the document, scan it and include it in what you present to the public when the public speaks. He said even if what he thinks is a preposterously inflated number of \$40,000, what is equal access worth for democracy. He said you spend money on ADA requirements and you spend money on these microphones. He said \$40,000 is a speck of dust compared to your \$100 Million budget this year. He said the City Librarian could foot the bill himself with just his own discretionary fund that he gets from the Friends.

Robert B. Livingston said he has a lot of problems with this Library and there are three things he would ask for. He said first thing is anybody that comes to this Library gets on the elevator and they discover the buttons aren't lit so they have to guess which one is opening for them. He said fix the buttons in the elevator. He said second when you get out on the third floor you look out the window and you see a ledge out there with a crushed can and wet newspaper that has been there for God knows how long and it seems like people working in this environment would notice something like that and have it cleaned off. He said the last thing is if you go into any Department Store multi-level you find a menu on the inside of the elevator that directs you to what is on each floor.

Commission Discussion

President Gomez said thank you to staff for framing our discussion and giving us the information that we are able to consider. She said she would make a correction to one thing that was said by a member of the public that these particular three people who are lobbying for this audiovisual access indicate that everyone else from the public has the opportunity, including the Friends who do not have a direct connection to the Library and she thinks that is not actually true. She said the only people we have using audiovisual equipment to make presentations are those with whom we do have a direct connection, which does not include people of the general public who just want to make comments. She said while the SOTF seemed to indicate that this was an abridgement of rights. she said she does not think the Sunshine Ordinance or the Brown Act directs us that we are required to have that access to the general public. She said she does not feel like we are losing people's comments. She said they get plenty of comments that are articulated well enough for us to understand without the addition of audiovisual presentations. She said she does not feel suspicious that our City Librarian is not giving us full information from our City Attorney. She said she feels that this policy is a policy of the San Francisco Public Library Commission and no other commission is in a place to see how our policies are enacted. She said that is her understanding.

Commissioner Mall asked what other Commissions do.

Luis Herrera, City Librarian, said that Commissions that meet at City Hall that have the set up for this do allow this. He said there are others that do not.

Sue Blackman, Library Commission Secretary, said there are a couple of Commissions that do not meet at City Hall that do not allow use of the audio visual equipment and there are others that do. She said it is just a policy of each Commission.

Commissioner Mall asked if the three minute allotment that we allow for public comment includes the time for the audiovisual set up.

President Gomez said the three minutes would include that during the course of the meeting, but she said any set up would have to happen with staff prior to the meeting.

Luis Herrera, City Librarian, read Administrative Code Section 67.15 (c) "...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." He said it does not speak specifically to any other permeation to that but it does specify upwards to three minutes.

Commissioner Ono asked what is involved in the \$40,000 set up.

Luis Herrera, City Librarian, said the AV laptop is currently set up on the lectern on the stage and in order to connect it to the public lectern we would have to run cables underneath the auditorium to hook it up there. He said in addition it would require modifications to allow for the laptop to be accessible to anyone with physical disabilities. He said DPW did the estimate of the costs.

Commissioner Lee said there is a comment about the two slides and that they would be missed if they did not have the slides. He said he observed that when public comment was given the copies could be given to the Secretary and they could be included in the Minutes. He said if they are included in the Minutes they would be available on the website and there would be nothing hidden and we would not need to spend the \$40,000.

President Gomez asked about the 150 word summaries.

Sue Blackman, Library Commission Secretary, said the documents brought in by the public would be referred to in the Minutes but they would not be incorporated into the Minutes like the 150 word statements are.

Commissioner Randlett asked if there is anything that prevents printed materials being available by the public in the back of the auditorium.

Sue Blackman, Library Commission Secretary, said there is nothing to prevent the public from bringing copies of printed materials and placing them at the back of the auditorium.

Commissioner Randlett said this would be a low-tech solution that if somebody had a PowerPoint they wanted everyone in the forum to see that they could print it and leave it at the back of the auditorium and advise people that if they wanted to see it, it was available and copies could be made available to the Commissioners.

Commissioner Munson said when we have an audiovisual presentation it is at the request of the Commission or City Librarian and it is part of a program that is planned to inform the public. He said this is one of the ways we communicate about the basic business of the Commission. He said that the presenters have a contract with the Library. He said if members of the audience want to make comments have their three minutes to do so. He said the Commission spends a lot of time listening to public comment and some of it is helpful and some of it is not helpful. He said there can be different opinions about what is being said. He said if the Commission wants to reserve this means of communication that is reasonable. He said if the public presents all kinds of stuff, the meetings could get very long and could be confusing to the public. He said a person that disagrees can provide written material at the back of the room and talk at the podium for three minutes. He said we are trying to get the job done.

Motion: By Commissioner Randlett, seconded by Commissioner Mall given the concern that is being raised by the public that they do not have the ability to present materials through the audio visual equipment to all those at the meeting in some type of presentation form, that they do have the ability to bring materials in a printed form and that they use their time in public comment to be able to go through the materials and that if other people have questions they can ask the speakers at the end of the meeting in the back of the room.

Action: AYES 6-0: (Lee, Gomez, Mall, Munson, Ono, and Randlett.)



# SUNSHINE ORDINANCE TASK FORCE **Compliance and Amendments Committee** CITY AND COUNTY OF SAN FRANCISCO MINUTES

**Hearing Room 408** City Hall, 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

September 17, 2013 - 4:00 PM

# **Regular Meeting**

Members: Allyson Washburn (Chair), Richard Knee, Kitt Grant

1. Call to order, roll call, and agenda changes.

> The meeting was called to order at 4:17 p.m. Member Knee was noted absent. There was a quorum.

Speakers: None.

2.. Adoption of August 20, 2013, Regular Meeting Minutes.

> Chair Washburn, seconded by Member Grant, moved to ADOPT the August 20, 2013, minutes as corrected.

Speakers: None.

#### The motion PASSED by the following vote:

Ayes: 2 – Grant, Washburn

Absent: 1 – Knee

3. File No. 13013: Hearing on the status of the Order of Determination of Ray Hartz Jr., against Luis Herrera City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment.

Ray Hartz, Jr., (Complainant) stated the Library has not allowed access to its audio visual equipment, failing to comply with the Order of Determination. The Complainant stated the impact of having audio visual equipment could be damaging to the Library, when used to inform the public of the \$53 million the Library cannot account for. There were no speakers in support of the Complainant. Michael Jeffers, Library (Respondent) referred the committee to the Library's letter dated September 12, 2013, stating the Library

Commission voted 6-0 to bar use of Library-provided audio-visual equipment for public comment, because allowing members of the public to use audio-visuals during public comment would require the Library to expend significant resources to make the necessary accommodations to modify the technology set up that the Library uses. There were no speakers in support of the Respondent. A question-and-answer period followed. Respondent waived rebuttal opportunity. Complainant provided a rebuttal.

Member Grant, seconded by Chair Washburn, moved to refer the matter back to the Task Force with notice to be sent requiring the City Librarian to attend the Task Force's next proceedings on the matter; recommendation of referral to Ethics Commission.

Speakers: Male speaker discussed the San Francisco Library's budget of \$100.5 million.

#### The motion PASSED by the following vote:

Ayes: 2 – Grant, Washburn

Absent: 1 – Knee

#### 4. Public Comment.

Ray Hartz said that compared to other commissions the Library Commission is not open and transparent; Male Speaker addressed the constitutional framework of First Amendment law.

# 5. Administrator's Report.

The Administrator presented the report.

Speakers: None.

#### 6. Announcements, Comments, Questions, and Future Agenda Items.

Chair Washburn stated future agenda items may address amendments to the Sunshine Ordinance.

#### 7. ADJOURNMENT

Chair Washburn, seconded by Member Grant, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Compliance and Amendments Committee adjourned at 4:53 p.m.

APPROVED: November 19, 2013

Vistor Young

Victor Young, Administrator Sunshine Ordinance Task Force

# Full Task Force Packet



# SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO AGENDA

Hearing Room 408 City Hall, 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

October 2, 2013 – 4:00 PM

# Regular Meeting

1. CALL TO ORDER, ROLL CALL, AND AGENDA CHANGES

(Vacant)	Seat 8	Todd David
Richard Knee (Hold Over)	Seat 9	Chris Hyland
Kitt Grant – <b>Chair</b>	Seat 10	Louise Fischer – Vice Chair
(Vacant)	Seat 11	Bruce Oka (Hold Over)
Allyson Washburn (Hold Over)		
David Pilpel	Ex-officio	Angela Calvillo
David Sims	Ex-officio	(Vacant)
	Richard Knee (Hold Over) Kitt Grant – Chair (Vacant) Allyson Washburn (Hold Over) David Pilpel	Richard Knee (Hold Over)  Kitt Grant – Chair (Vacant)  Allyson Washburn (Hold Over)  David Pilpel  Seat 9  Seat 10  Seat 11  Ex-officio

- 2. **File No. 12058:** The Compliance and Amendments Committee has referred File No. 12058, Dominic Maionchi against Recreation and Park for allegedly failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders. (approximately 30 minutes) (Discussion and Possible action) (attachment)
- 3. **Public Comment:** Members of the public may address the Sunshine Ordinance Task Force (SOTF) on matters that are within SOTF's jurisdiction, but not on today's agenda. (No Action) **Public comment shall be taken at 5:00 pm or as soon thereafter as possible.**
- 4. **File No. 12059:** The Compliance and Amendments Committee has referred File No. 12059, Supreet Pabla, SEIU Local 1021 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees. *(approximately 30 minutes) (Discussion and Possible action) (attachment)*
- 5. **File No. 13013:** The Compliance and Amendments Committee has referred File No. 13013, of Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment. (approximately 30 minutes) (Discussion and Possible action) (attachment)

- 6. **File No. 13012:** Complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen. Challenge. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge. (approximately 45 minutes) (Discussion and Action)
- 7. **File No. 13021:** Complaint filed by Patrick Monette-Shaw and Maria Rivero, MD against the Public Health Commission for allegedly violating Sunshine Ordinance §§ 67.7(a), 67.7(b), and 67.9(a); failing to notice members of the public, and noticing a deficient agenda. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed Patrick Monette-Shaw and Maria Rivero, MD against the Public Health Commission for allegedly violating Sunshine Ordinance §§ 67.7(a), 67.7(b), and 67.9(a); failing to notice members of the public, and noticing a deficient agenda. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by Patrick Monette-Shaw and Maria Rivero, MD against the Public Health Commission for allegedly violating Sunshine Ordinance §§ 67.7(a), 67.7(b), and 67.9(a); failing to notice members of the public, and noticing a deficient agenda. (approximately 45 minutes) (Discussion and Action)
- 8. **File No. 13024:** Complaint filed by Mica Ringel against the Planning Department for allegedly failing to provide requested records associated with the proposed development of 480 Potrero Avenue. *(attachment)* 
  - (a) Determination of jurisdiction on complaint filed Mica Ringel against the Planning Department for allegedly failing to provide requested records associated with the proposed development of 480 Potrero Avenue. (approximately 5 minutes) (Discussion and Action)
  - (b) Hearing on complaint filed by Mica Ringel against the Planning Department for allegedly failing to provide requested records associated with the proposed development of 480 Potrero Avenue. (approximately 45 minutes) (Discussion and Action)

- 9. Approval of Minutes from the March 6, 2013 Regular Meeting. (approximately 5 minutes) (Action) (attachment)
- 10. Approval of Minutes from the April 3, 2013 Regular Meeting. (approximately 5 minutes) (Action) (attachment)
- 11. Approval of Minutes from the May 1, 2013 Regular Meeting. (approximately 5 minutes) (Action) (attachment)
- 12. **Approval of Minutes from the June 5, 2013 Regular Meeting.** (approximately 5 minutes) (Action) (attachment)
- 13. **Approval of Minutes from the July 9, 2013 Special Meeting.** (approximately 5 minutes) (Action) (attachment)
- 14. **Approval of Minutes from the August 7, 2013 Regular Meeting.** (approximately 5 minutes) (Action) (attachment)
- 15. **Approval of Minutes from the September 4, 2013 Regular Meeting.** (approximately 5 minutes) (Action) (attachment)
- 16. Report: Compliance and Amendments Committee meeting of September 17, 2013. (approximately 5 minutes) (Discussion)
- 17. Report: Education, Outreach and Training Committee meeting of September 16, 2013. (approximately 5 minutes) (Discussion)
- 18. **Administrator's Report.** (approximately 5 minutes) (Discussion)
- 19. Announcements, Comments, Questions, and Future Agenda Items. (approximately 10 minutes) (Discussion and Action)
- 20. ADJOURNMENT

## **Agenda Item Information**

Each item on the agenda may include: 1) Department or Agency cover letter and/or report; 2) Public correspondence; 3) Other explanatory documents. For more information concerning agendas, minutes, and meeting information, such as these documents, please contact the SOTF Clerk, City Hall, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102.

Audio recordings of the meeting of the Sunshine Ordinance Task Force are available at: <a href="http://www.sfbos.org/index.aspx?page=9811">http://www.sfbos.org/index.aspx?page=9811</a>

For information concerning Sunshine Ordinance Task Force please contact by e-mail <u>sotf@sfgov.org</u> or by calling (415) 554-7724.

#### **Public Comment**

Public Comment will be taken before or during the Committee's consideration of each agenda item. Speakers may address the Task Force for up to three minutes on that item. During General Public Comment, members of the public may address the Task Force on matters that are within the Task Force's jurisdiction and are not on the agenda. 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 official file.

Each member of the public will be allotted the same maximum number of minutes to speak as set by the Chair at the beginning of each item, excluding persons requested by the Task Force to make presentations.

Each member of the public who is unable to attend the public meeting or hearing may submit to the City, by the time the hearing begins, written comments regarding the subject of the meeting or hearing;. These comments will be made a part of the official public record.

#### **Hearing Procedures**

5 minutes

1.	Complement presents marker their their their	5 111111111100
	Other parties of Complainant present facts and evidence	Up to 3 minutes each
2.	City responds	5 minutes
	Other parties of City respond	Up to 3 minutes each
	Above total speaking times for Complainant and City to be the same.	
3.	Matter is with the Task Force for discussion and questions.	
4.	Respondent and Complainant presents clarification/rebuttal	3 minutes
5.	Matter is with the Task Force for motion and deliberation.	
6.	Public comment (Excluding Complainant & City response,	Up to 3 minutes each
	witnesses)	•
7.	Vote by Task Force (Public comment at discretion of chair on new	

Complainant presents his/her facts and evidence

motion and/or on new motion if vote fails.)

1

Note: Time must be adhered to. If a speaker is interrupted by questions, the interruption does not count against his/her time.

#### **Disability Access**

The hearing rooms in City Hall are wheelchair accessible. Assistive listening devices for the hearing rooms are available upon request with the SOTF Clerk. The nearest accessible BART station is Civic Center (Market/Grove/Hyde Streets). Accessible MUNI Metro lines are the F, J, K, L, M, N, T (exit at Civic Center or Van Ness Stations). MUNI bus lines also serving the area are the 5, 6, 9, 19, 21, 47, 49, 71, and 71L. For more information about MUNI accessible services, call (415) 701-4485. There is accessible parking in the vicinity of City Hall at Civic Center Plaza and adjacent to Davies Hall and the War Memorial Complex. Accessible curbside parking is available on Dr. Carlton B. Goodlett Place and Grove Street.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week: For American sign language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the SOTF Clerk at (415) 554-7724 to make arrangements for the accommodation. Late requests will be honored, if possible.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

#### Know Your Rights Under the Sunshine Ordinance

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 (Chapter 67 of the San Francisco Administrative Code) or to report a violation of the ordinance, contact: Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102; phone (415) 554-7724; fax (415) 554-7854; or email sott@sfgov.org.

Citizens may obtain a free copy of the Sunshine Ordinance by printing Chapter 67 of the San Francisco Administrative Code on the Internet, at <a href="http://www.sfbos.org/sunshine">http://www.sfbos.org/sunshine</a>.

#### Cell Phones, Pagers and Similar Sound-Producing Electronic Devices

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 (Chapter 67A of the San Francisco Administrative Code).

#### 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 & Governmental Conduct Code §2.100, et. seq] to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the Ethics Commission at: 25 Van Ness Avenue, Suite 220, San Francisco, CA 94102; telephone (415) 581-3100; fax (415) 252-3112; web site www.sfgov.org/ethics

File No	13013	SOTF Item No.	5
	SUNSHINE ORDINAN AGENDA PACKET O		

Sunshine O	rdinance Task Force (SOTF)	Date:
Compliance	e and Amendments Committee (CAC	) <b>Date:</b> October 2, 2013
OTHER		
Completed b Completed b	Date  Date  Date  Date  Date	

<sup>\*</sup>An asterisked item represents the cover sheet to a document that exceeds 75 pages. The complete document is in the file.

CITY AND COUNTY OF SAN FRANCISCO



SUNSHINE ORDINANCE TASK FORCE

# ORDER OF DETERMINATION August 19, 2013

**DATE THE DECISION ISSUED**July 9, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013).

#### **FACTS OF THE CASE**

Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

#### **COMPLAINT FILED**

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

#### HEARING ON THE COMPLAINT

On July 9, 2013, Complainant, Mr. Hartz appeared before the Task Force and presented his claim. Respondents Sue Blackman, Library Commission Secretary and Roberto Lombardi, Library Logistics presented the Library's defense.

The issue in the case is whether the Agency violated Section 67.15 of the Ordinance.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based on the testimony and evidence presented the Task Force finds the testimony of Complainant Mr. Hartz to be persuasive and finds that Sections 67.15(a) and 67.15(d) to be applicable in this case. The Task Force does not find testimony provided by the Library persuasive to this case.

#### **DECISION AND ORDER OF DETERMINATION**

The Task Force finds that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. The Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with this Order.

# CITY AND COUNTY OF SAN FRANCISCO

# SUNSHINE ORDINANCE TASK FORCE

This Order of Determination was adopted by the Sunshine Ordinance Task Force on July 9, 2013 by the following vote: (Sims/Oka)

Ayes: Knee, Washburn, Sims, David, Hyland, Oka, Fischer, Grant

Noes: Pilpel

Kitt Grant, Chair

Mich Grant

Sunshine Ordinance Task Force

c: Jerry Threet, Deputy City Attorney

Ray Hartz, Jr., Complaint

Sue Blackman, Library Commission Secretary, Respondent

Roberto Lombardi, Library Logistics, Respondent

# CITY AND COUNTY OF SAN FRANCISCO



DENNIS J. HERRERA City Attorney

# OFFICE OF THE CITY ATTORNEY

JERRY THREET
Deputy City Attorney

DIRECT DIAL: (415) 554-3914 E-MAIL: jery.threet@sfgov.org

#### MEMORANDUM

July 5, 2013

RAY HARTZ VS. CITY LIBRARIAN LUIS HERRERA (13013)

#### **COMPLAINT**

#### THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Ray Hartz ("Complainant") alleges that the City Librarian, Luis Herrera (the "Librarian") violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech.

# COMPLAINANT FILES COMPLAINT:

On March 4, 2013, Complainant filed a complaint with the Task Force alleging a violation of Section 67.15 of the Ordinance.

#### **JURISDICTION**

The Library clearly is a City Department and the Library Commission is a charter policy body. The Task Force therefore has jurisdiction to hear a public meetings complaint.

#### APPLICABLE STATUTORY SECTION(S):

• Section 67.15 governs the public comment at meetings of policy bodies.

#### APPLICABLE CASE LAW:

None.

#### ISSUES TO BE DETERMINED

Complainant: Complainant alleges that the Librarian violated the Ordinance by failing to provide equal access to members of the public to Library audiovisual equipment for use during public comment at Library Commission meetings, thereby abridging their speech. Complainant provides copies of emails to support his complaint.

Those emails show that on January 14, 2013, Complainant requested from the Librarian public access to Library audiovisual equipment for use during public comment at Commission meetings, noting that such equipment was used by groups that Complainant described as being approved by the Library. The 1/14/13 email also argued that denying access to the public to such

#### Memorandum

DATE:

July 5, 2013

PAGE:

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RE:

Hartz v. Librarian (13013)

equipment would violated Section 67.15(d) of the Ordinance by abridging public comment. Complainant submitted another email with similar requests and arguments to the Librarian from January 24, 2013.

Complainant submitted a third email to Herrera dated February 14, 2013 in which it was noted that the Librarian had promised to "look into" the request, but that Complainant had never heard back. He also submitted an email response from the Librarian dated February 21, 2013, in which Herrera stated that Library staff continued to "look into the feasibility of making the necessary changes to the media set up at Koret Auditorium [] in order to accommodate your request."

Respondent: On March 5, 2013, the Librarian responded by letter to Complainant's request. In the 3/5/13 letter, the Librarian disputes Complainant's assertion that the Library violates the public meeting laws by failing to provide public access to Library audiovisual equipment. The letter asserts that no provision of the Ordinance or of the Brown Act requires that the Library provide such access. In particular, the letter asserts that Section 67.15 of the Ordinance does not prescribe any specific technological means by which the public must be given access to public comment. In addition, the letter asserts that the Library does not discriminate on the basis of viewpoint of members of the public making public comment.

The 3/5/13 letter also describes the efforts made to date by Library staff re the feasibility of providing audiovisual aids to members of the public for comment at Commission meetings, concluding that many options involved costs that the Library cannot absorb. The letter also notes that those currently allowed access to Library computers to use audiovisual equipment include only staff and those invited by the Library Commission or staff to make an official presentation to the Commission regarding an item on the Commission agenda. Otherwise, the Librarian asserts, the Commission does not allow access to its computers by members of the public, without regard for their viewpoint.

#### **QUESTIONS THAT MIGHT ASSIST IN DETERMINING FACTS:**

- Does Complainant assert that the Commission may not invite private parties to make official presentations on items on the agenda without providing equal time and access to members of the public who wish to respond to such presentations?
- Does Complainant assert that any member of the public making public comment on an item, as distinct from making an official presentation, is given access to Library audiovisual equipment in making that public comment?

#### LEGAL ISSUES/LEGAL DETERMINATIONS:

• Has the Librarian violated Section 67.15 of the Ordinance?

#### 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:

July 5, 2013

PAGE:

2

RE:

Hartz v. Librarian (13013)

# CHAPTER 67, SAN FRANCISCO ADMINISTRATIVE CODE (SUNSHINE ORDINANCE)

#### 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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)





## 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 Saw Francisco Riburo Library
Name of individual contacted at Department or Commission Luis there and CTY LIBEARIA
☐ Alleged violation public records access  Alleged violation of public meeting. Date of meeting Au Library Commission
Sunshine Ordinance Section 67.15 (d)  (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.  DESPITE REPEATES REQUESTS FROM THE PUBLIC, CITY WORARIAN LUIS HERRERA HAS CONTINUED TO DENY ACCES TO MEMBERS.
DO YOU Want a public hearing before the Sunshine Ordinance Task Force?   yes   no  no  no  no  no  no  no  no  no  n
(Optional) <sup>1</sup> Ray W Hartz, IR Address Mr. Ray W. Hartz Jr. 839 Leavenworth St. #304 San Francisco, CA 94109-6131
Telephone No. (415) 345-9144 E-Mail Address RWIARTZTE @SBCQLOBAL, DET
Date MARCH 4, 2013    Ray Whark   Signature   Signature   No.   Yes   No.   No
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

07/31/08

<sup>&</sup>lt;sup>1</sup> 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).

From: Luis Herrera (lherrera@sfpl.org)

To: rwhartzir@sbcglobal.net;

Date: Thu, February 21, 2013 2:32:38 PM

Cc: sotf@sfgov.org; acastillo@sfpl.org; sue.a.blackman@sfgov.org; Jerry.Threet@sfgov.org;

chaffeej@pacbell.net; libraryusers2004@yahoo.com;

Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]

Sent: Thursday, February 14, 2013 12:10 PM

To: Luis Herrera

 $\textbf{Cc:} \ SOTF; \ Almer \ Castillo; \ sue.a.blackman@sfgov.org; \ SFCityAtty\_Threet \ Jerry; \ James \ Chaffee; \ Peter \ Warfield \ SOTF; \ Almer \ Castillo; \ sue.a.blackman@sfgov.org; \ SFCityAtty\_Threet \ Jerry; \ James \ Chaffee; \ Peter \ Warfield \ SOTF; \ Almer \ Castillo; \ Almer \ Casti$ 

Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your committment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr. Director San Francisco Open Government

---- Forwarded Message ----

From: Ray Hartz Jr <rwhartzir@sbcglobal.net>

To: Luis Herrera < lherrera@sfpl.org>

Cc: "sue a blackman@sfgov.org" <sue a blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilities provided to persons/organizations of whom the Library and Library Commission approve?

The facilites in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arragement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activites, or of the acts or ommission of the body, on the basis that the performance of one or more public employees is implicated...: This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Ray Hartz Jr <rwhartzir@sbcglobal.net>

To: Luis Herrera < herrera@sfpl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeei@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; Jack Song <Jack.Song@sfgov.org>

Sent: Mon, January 14, 2013 12:30:16 PM

Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual

## Ausberry, Andrea

From:

Ray Hartz Jr [rwhartzjr@sbcglobal.net]

Sent:

Thursday, March 14, 2013 6:17 AM

To:

SOTF

Cc:

Threet, Jerry

Subject:

Fw: Audiovisual access at Library Commission meetings - reply - reply

Attachments:

[Untitled].pdf

Dear Ms. Ausberry,

Please add this email chain, and the attached response, to the file for complaint #13013, Ray Hartz v. Luis Herrera. It contains the original request, subsequent correspondance, and the final reply to my request to the City Librarian, Luis Herrera.

Thank you,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

---- Forwarded Message ----

From: Luis Herrera < lherrera@sfpl.org>
To: Ray Hartz Jr < rwhartzjr@sbcglobal.net>

**Cc:** SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty\_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org"

<ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>

Sent: Wed, March 6, 2013 4:41:01 PM

Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

Luis Herrera, City Librarian

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]

Sent: Thursday, February 21, 2013 8:38 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty Threet Jerry; James Chaffee; Peter Warfield;

ethics.commission@sfgov.org; john.st.croix@sfgov.org

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I have made it very, very clear that whatever process you use to incorporate the graphics of those of which you approve (The Friends, the Community Benefit District, etc.) is something I can work with. If they send you Microsoft Powerpoint documents by email to include them in the projected images, I can do the same. I'm not asking for special changes, just the ability to access the graphics in the same way you allow other to. You seem to want to make this a very complicated request, when it's something you

do (and have been doing) for people at almost every meeting of the Library Commission. <u>You simply want to deny the same access to me and others because you don't like what we say!</u> That is suppressing dissenting opinion, which is forbidden under both the Sunshine Ordinance and the Brown Act.

Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Luis Herrera < <a href="mailto:lherrera@sfpl.org">lherrera@sfpl.org</a>
To: Ray Hartz Jr <a href="mailto:rwhartzjr@sbcglobal.net">rwhartzjr@sbcglobal.net</a>

Cc: SOTF < sotf@sfgov.org >; Almer Castillo (acastillo@sfpl.org >; "sue.a.blackman@sfgov.org" (sue.a.blackman@sfgov.org >; results = sotf@sfgov.org >; results = sotf@sfgo

SFCityAtty\_Threet Jerry < <a href="mailto:Yerry.Threet@sfgov.org">Yerry.Threet@sfgov.org</a>; James Chaffee < <a href="mailto:Chaffeei@pacbell.net">Chaffeei@pacbell.net</a>; Peter Warfield

libraryusers2004@yahoo.com>

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Subject: RE: Audiovisual access at Library Commission meetings - reply

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Thank you,

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Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
Iherrera@sfpl.org

From: Ray Hartz Jr [mailto:rwhartzir@sbcglobal.net]

Sent: Thursday, February 14, 2013 12:10 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty Threet Jerry; James Chaffee; Peter Warfield

Subject: Fw: Audiovisual access at Library Commission meetings

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Ray W. Hartz, Jr.

Director San Francisco Open Government

---- Forwarded Message ----

From: Ray Hartz Jr <rwhartzir@sbcglobal.net>

To: Luis Herrera < lherrera@sfpl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeei@pacbell.net>;

Peter Warfield <a href="mailto:slibraryusers2004@yahoo.com">stack Song@sfgov.org</a>

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

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Sincerely,

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Director, San Francisco Open Government

From: Ray Hartz Jr <rwhartzjr@sbcglobal.net>

To: Luis Herrera < lherrera@sfpl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeei@pacbell.net>;

Peter Warfield <a href="mailto:libraryusers2004@yahoo.com">libraryusers2004@yahoo.com</a>; Jack Song <a href="mailto:Jack.Song@sfgov.org">Jack.Song@sfgov.org</a>

Sent: Mon, January 14, 2013 12:30:16 PM

Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,		
Ray W. Hartz, Jr. Director, San Francisco Open Government		
Official SFPL Use Only	والمنافعة ولمنافعة والمنافعة والمنافعة والمنافعة والمنافعة والمنافعة والمناف	Amerikan mirikatur negeri intimizi menganen menerakan mengan miningan perdapat a
Official SFPL use only	•	

# Official SFPL use only

#### Ausberry, Andrea

From: Sent:

Ray Hartz Jr [rwhartzjr@sbcglobal.net] Wednesday, June 26, 2013 3:37 PM

То:

SOTE

Subject:

Fw: Audiovisual access at Library Commission meetings - reply - reply

Attachments:

[Untitled].pdf

Dear Ms. Ausberry,

### Please include the following email chain in the file for Case #13013, Ray Hartz v Luis Herrera, City Librarian.

I would like the Task Force members to note that I made it clear that I was not expecting special treatment, but was expecting equal treatment.

I offered to provide documents in Microsoft PowerPoint, which is what I believe all of their "invited" participants use, and that option was ignored in his response.

Mr. Herrera wants to make this seem like an impossible request by claiming a need for huge expenditures, which is not the case!

He only wants to deny access based upon "viewpoint descrimination," allowing those he invites (read approves) access and denying the same to those who chose to attend (read disapproves.)

This is not only a clear violation of the Sunshine Ordinance, but I believe, the Brown Act.

Mr. Herrera has already been found in violation for withholding public records by the Task Force and referred to the Board of Supervisors. This is truly a "pattern of behavior" designed to censor and/or abridge public comment!

Sincerely,

Ray W. Hartz, Jr.

Director, San Francisco Open Government

---- Forwarded Message ----

From: Luis Herrera <a href="mailto:From">From: From: Fr

Cc: SOTF <sotf@sfgov.org>; Almer Castillo <acastillo@sfpl.org>; "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SFCityAtty\_Threet Jerry <Jerry.Threet@sfgov.org>; James Chaffee <chaffeej@pacbell.net>; Peter Warfield libraryusers2004@yahoo.com>; "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>; "john.st.croix@sfgov.org" <john.st.croix@sfgov.org>

Sent: Wednesday, March 6, 2013 4:40 PM

Subject: RE: Audiovisual access at Library Commission meetings - reply - reply

Mr. Hartz,

Please see attached response regarding your request for audiovisual access at Library Commission meetings.

Luis Herrera, City Librarian

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Sent: Thursday, February 21, 2013 8:38 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo; sue.a.blackman@sfgov.org; SFCityAtty Threet Jerry; James Chaffee; Peter Warfield;

ethics.commission@sfgov.org; john.st.croix@sfgov.org

Subject: Re: Audiovisual access at Library Commission meetings - reply

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Ray W. Hartz, Jr.

Director, San Francisco Open Government

From: Luis Herrera < lherrera@sfpl.org>

To: Ray Hartz Jr < rwhartzir@sbcglobal.net>

 $\textbf{Ce: SOTF} < \underline{sotf@sfgov.org} > ; \textbf{Almer Castillo} & \underline{acastillo@sfpl.org} > ; \\ "\underline{sue.a.blackman@sfgov.org}" < \underline{sue.a.blackman@sfgov.org} > ; \\ "\underline{sue.a.blackman@sfgov.org}" > ; \\ "\underline{sue.a.blackma$ 

SFCityAtty\_Threet Jerry < Jerry. Threet@sfgov.org>; James Chaffee < chaffeej@pacbell.net>; Peter Warfield

< libraryusers 2004@yahoo.com>

Sent: Thu, February 21, 2013 2:32:41 PM

Subject: RE: Audiovisual access at Library Commission meetings - reply

Mr. Hartz,

Staff is continuing to look into the feasibility of making the necessary changes in the media set up in the Library's Koret Auditorium set up in order to accommodate your request to allow for audio visual presentations from the public. I will provide a response to your request as soon as I have the information.

Thank you,

Luis

Luis Herrera
City Librarian
San Francisco Public Library
100 Larkin Street, Room 600
San Francisco, CA 94102
415-557-4232 - Office
415-557-4239 - Fax
lherrera@sfpl.org

From: Ray Hartz Jr [mailto:rwhartzjr@sbcglobal.net]

Sent: Thursday, February 14, 2013 12:10 PM

To: Luis Herrera

Cc: SOTF; Almer Castillo; <a href="mailto:sue.a.blackman@sfgov.org">stgov.org</a>; SFCityAtty\_Threet Jerry; James Cnaffee; Peter Warfield Subject: Fw: Audiovisual access at Library Commission meetings

Mr. Herrera,

It has been a month since my original request. Despite your committment to "look into it," I've heard nothing since! And, obviously another Library Commission meeting has come and gone, with another just a week away, and members of the public have continued to be denied "access to the graphics" given to those of which you approve.

Ray W. Hartz, Jr. Director San Francisco Open Government

---- Forwarded Message ----

From: Ray Hartz Jr < rwhartzjr@sbcglobal.net>

To: Luis Herrera < <a href="mailto:lherrera@sfpl.org">lherrera@sfpl.org</a>>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeei@pacbell.net>;

Peter Warfield < libraryusers2004@yahoo.com >; Jack Song < Jack.Song@sfgov.org >

Sent: Tue, January 29, 2013 8:43:57 AM

Subject: Re: Audiovisual access at Library Commission meetings

Mr. Herrera,

With the next Library Commission meeting on February 7th, I would like to know if there has been progress in your efforts to determine whether the public will be granted "equal access" to the audiovisual facilites provided to persons/organizations of whom the Library and Library Commission approve?

The facilites in the Koret Auditorium seem quite extensive! I'm not certain that it should be such a complicated arragement that it would take much in effort and/or resources to provide the access to members of the public which is already provided to groups whose opinions you wish presented. Why is it that those who have "dissenting opinions" are denied the same level of assistance?

If groups like The Friends and the Civic Center Community Benefit District can provide you with materials to be shown, maybe members of the Public can submit audiovisual aids in the same manner, so that they can be included in the same way? Perhaps it comes down to the fact that you "approve" of their input and "disapprove" ours?

The presentations by "outside groups" are most often submitted as Microsoft PowerPoint documents. Perhaps if I submit my AV aids in the same fashion, not only can they be utilized in the meeting, but the Library Commission can include them in the public information packets sent to interested persons? If you can do it for those you like, public policy dictates that "equal access" be provided even to those of whom you disapprove, unless it is your intent to continue to "abridge public criticism of the policy, procedures, programs or services of the City, or of any other aspect of its proposals or activites, or of the acts or ommission of the body, on the basis that the performance of one or more public employees is implicated...: This would, of course be a violation of Sec 67.15 Public Testimony of the Sunshine Ordinance.

Sincerely,

Ray W. Hartz, Jr. Director, San Francisco Open Government From: Ray Hartz Jr < rwhartzir@sbcglobal.net>

To: Luis Herrera < lherrera@sfpl.org>

Cc: "sue.a.blackman@sfgov.org" <sue.a.blackman@sfgov.org>; SOTF <sotf@sfgov.org>; James Chaffee <chaffeej@pacbell.net>;

Peter Warfield <a href="mailto:slibraryusers2004@yahoo.com">styration:slibraryusers2004@yahoo.com</a>; Jack Song <a href="mailto:slibraryusers2004@yahoo.com">styration:slibraryusers2004@yahoo.com</a>;

Sent: Mon, January 14, 2013 12:30:16 PM

Subject: Audiovisual access at Library Commission meetings

Mr. Herrera,

I would request that arrangements be made to allow members of the public the ability to use audiovisual aids to support their public comments.

In the Sunshine Ordinance, under section 67.15 PUBLIC TESTIMONY, section (d) "A policy body shall not abridge or prohibit public criticism of the policy, procedures, programs or services of the City..."

While the Library and the Library Commission allow use of audiovisual equipment to groups and persons of which you "approve," you have continued to deny access to those who have "critical comments." There is a well established animosity toward certain members of the public who have "critical comment." The President of the Library Commission has been found to have illegally abridged public comment by the Sunshine Ordinance Task Force. She was subsequently found by the San Francisco Ethics Commission to have engaged in unacceptable behavior in this regard and recommended for removal.

I, and other members of the public, have had public comment censored and excluded from the official record of public meetings. It has only been through a long and drawn-out process that my public testimony has been accurately represented in the official record, by inclusion of my submitted 150 word summaries. You have, in fact, continued to treat other members of the public in ways that essentially censor their public comments.

You, have been found to have withheld public records, which you knew were disclosable. This matter has been referred to the Ethics Commission, and, I look forward to having the opportunity to present my case there and hear your response. Although, I have to admit, that I believe you will send Ms. Blackman to try and justify your actions!

All other City boards and commission, in whose meetings audiovisual aids are used, provide access to the public to that equipment. Although the facilities at the Library are available, you only deny them to members of the public who are "critical" of the operations of the Library and/or Library Commission. It is my contention that this is done to limit the ability of members of the public to make effective public comment, and, as such, abridges public criticism.

Sincerely,

Ray W. Hartz, Jr. Director, San Francisco Open Government

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March 5, 2013

Mr. Ray Hartz 839 Leavenworth Street, Apt. 304 San Francisco, CA 94109-6131 Via email: rwhartzir@sbeglobal.net

Dear Mr. Hartz,

On January 14, 2013, you requested that the San Francisco Public Library (SFPL) allow members of the public to use audiovisual aids to support their public comments. You assert that SFPL denies the public access to the audiovisual aids in an effort to abridge public criticism. You also assert that such action violates San Francisco Administrative Code Section 67.15, which prohibits a policy body from "abridg[ing] or prohibit[ing] public criticism of the policy, procedures, programs or services of the City...."

I respectfully disagree. The Commission does not discriminate on the basis of viewpoint in allowing members to exercise their right to address public comments to the Commission. Further, neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15, which specifically addresses the right to public comment in San Francisco, does not prescribe the method, means, or mode of technology that SFPL must allow the public to use during public comment.

Library staff have explored options to accommodate your request. We looked at providing the public with a basic transparency device that uses an overhead projector. However, this option was not viable as the projector could not project the image on the auditorium stage screen to allow the public and commissioners to view. The only option available for audio visual presentations at the SFPL Commission meetings would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public lectern. This option would require the library department to incur additional expense and resources. Specifically, we would need to enlist the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage to the public lectern, where members of the public would place a laptop or use a jump drive to connect to the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would also be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000. The Library Department does not have the resources to incur these additional costs.

Currently, the Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. For example, the architects as part of the Bond Managers report, other City departments or the Friends of the Library may have; on occasion, connected their laptops or preloaded materials to SFPL audiovisual equipment for presentations that the Commission has invited them to make for items that the Commission has placed on its agenda. However, SFPL staff have expended resources to load the materials into the Library's information processing system ahead of time. Where the Commission invites private parties to make presentations, SFPL expends its resources as necessary to effect those presentations. Otherwise, the department uniformly declines to allow members of the public, without regard to their viewpoint, to connect their laptops or external devices to the department's audiovisual facilities because of the additional expense and resources discussed above.

Sincerely,

Luis Herrera City Librarian September 12, 2013

Members, Sunshine Ordinance Task Force Via email sotf@sfgov.org

Re: Complaint #13013, Ray Hartz v. City Librarian Luis Herrera Complaint #13056, Ray Hartz v. City Librarian Luis Herrera

Dear Chairman Grant and Task Force Members:

This letter responds to the Sunshine Ordinance Task Force's (SOTF) ruling at its July 9, 2013 meeting regarding Complaint #13013, Ray Hartz v. City Librarian Luis Herrera and Complaint #13056, Ray Hartz v. City Librarian Luis Herrera.

The Order of Determination was issued on August 19, 2013 ruling that the Library Commission violated Section 67.15(a) and 67.15(b) of the Sunshine Ordinance for abridging public comment by not providing equal access to audio visual equipment by invited parties and the public. It further states that the Library Commission shall provide equal access to its audio visual equipment and appear before the Compliance and Amendments Committee on September 17, 2013 for a hearing on its compliance with the Order.

The Library Commission met on August 15, 2013 and voted 6-0 to not allow the use of audio visual equipment for public comment because allowing members of the public to use audio visuals during public comment would require SFPL to expend significant resources to make the necessary accommodations to modify the technology set up that SFPL uses. The Commission made it clear that the public could bring printed copies of presentations to the Commission and have them available at the back of the room. (See attached Draft Library Commission Minutes for August 15, 2013).

The Library explored various options that would allow the public to use the audio visuals during public comment, including providing the public with a basic transparency device that uses an overhead projector. This option was not viable as the projector could not project the image on the auditorium screen to allow the public and commission to view. The only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the department's information technology set up to allow for the public to download their presentations from a laptop from the public. This option would require the Library to retain the services of engineering staff and a construction contractor to modify the cable set up, including running cables under the stage podium and projection room. Additional equipment costs to provide the interface for the laptop and modifying the lectern to accommodate the equipment and ensure proper ADA set up would be necessary. Preliminary cost estimates from our facilities department working with the Department of Public Works places that cost at a minimum of \$40,000, which the Library does not have.

The Commission does not discriminate on the basis of viewpoint in allowing members of the public to exercise their right to address public comments to the Commission. The Library Commission allows only SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect its audio visual equipment. This policy is not based on viewpoint. Additionally, the City Attorney's Office has advised the Commission that neither the Brown Act nor the Sunshine Ordinance gives members of the public the right of access during public comment to SFPL audiovisual technology. In particular, Administrative Code Section 67.15 which specifically addresses the right to public comments in San Francisco does not prescribe the method, means or mode of technology that SFPL must allow the public to use during public comment.

We hope that this resolves the Task Force's concerns about this matter. Thank you for your time and consideration.

Sincerely,

Sue Blackman Library Commission Secretary/Custodian of Records

cc: Luis Herrera, City Librarian
Ray Hartz
Jewelle Gomez, Library Commission President

#### **Draft Library Commission Minutes August 15, 2013**

#### AGENDA ITEM 2. USE OF AUDIO VISUAL EQUIPMENT BY THE PUBLIC

Luis Herrera, City Librarian, referred to a memo in the Commissioner's packet and explained the background of the item. He said there is also a letter to Mr. Ray Hartz dated March 5, 2013 and a copy of Section 67.15 Public Testimony of the Sunshine Ordinance. He said Mr. Hartz had requested that members of the public be able to use audio visual aids to support public comment. His request was declined by the Library and he subsequently filed a complaint with the SOTF. He said Mr. Hartz asserts that the Library denies public access to audiovisual aids to abridge public criticism and he also asserts that such action violates San Francisco Administrative Code Section 67.15. He said the Library did explore options to accommodate his request including providing the public with a basic transparency device that uses an overhead projector. He said this option was not feasible as the projector could not project the image on the auditorium screen to allow the public and commission to view. He said the only option available for audio visual presentations at the Library Commission meeting would require reconfiguring the Library's information technology set up to allow the public to download their presentations from a laptop. He said this option would require expenditure of additional expenses and resources. He said engineering staff and a construction contractor would need to modify the cable set up, including running cables under the stage podium and into the projection room. He said the Library conferred with the Department of Public Works to ensure proper ADA setup and the preliminary cost estimate range up to \$40,000 which is not included in this year's budget. He said the Library Commission only allows SFPL staff and individuals or organizations invited to make presentations to the Commission to use the Library's computers to connect to its audio visual equipment. He said for these reasons Mr. Hartz' request was declined. He said the SOTF heard the complaint on July 9 and found the Library in violation of Administrative Code Section 67.15 for abridging public comment by not providing access to the audiovisual equipment. He said they referred the matter to the SOTF Compliance and Amendments Committee. He said the item before you will give the Commission the opportunity to discuss and possibly take action on this matter. The Commission may choose to allow members of the public to use audio visuals during public comment by supporting additional expenses and resources. He said the City Attorney has opined that whether the Library provides the public with access to the audio visual equipment is a policy call because neither the Brown Act nor the Sunshine Ordinance prescribes the method, means, or mode of technology that SFPL must allow the public to use during public comment.

#### **Public Comment**

An anonymous citizen said this is a situation where Stacey Aldrich the State Librarian appeared before you last February and she described how communication is becoming more digital and visual and it is necessary in order to allow full discourse. He said you have in front of you a copy of the law and two letters from the City Librarian. He asked where are the letters from Ray Hartz, where is the complaint, where are the deliberations from the Sunshine Ordinance Task Force or the SOTF's Order of Determination. He said you have none of that

in front of you nor do you have anything from the City Attorney that supports Luis Herrera's characterization of their opinion. He said this is a basic right. He said the law doesn't say that you have to provide visual access. He said what the law says is that you have to provide equality and equal treatment in a public forum. He said this is a situation where this Library Commission can just say no. He said you have not been given a draft resolution so that you can see what it would look like to approve or reject. He said you have not been given any of the real information about why this is not only good policy but the law and why the SOTF approved it. He said the Commission should simply say that you are going to reject this one-sided abuse of the Commission's intelligence and approve the citizen's access to the graphics.

The following written summary was provided by the speaker, anonymous citizen. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

Stop the Hate, Stop the Ignorance – Don't give money to, or accept money from the Friends of the Library. The mot de Coulter is wonderfully appropriate now. The State Librarian Stacey Aldrich appeared before you in February, 2012, and described how communication is becoming more digital and visual, and that is necessary to modern discourse. You have two letters from the City Librarian. Where are the letters from Mr. Hartz, the Sunshine complaint, the Sunshine Ordinance Task Force's deliberations and determination, or confirmation of the City Attorney's opinion? The law doesn't say you have to provide visual access. It says you have to provide equal treatment in a public forum. You have not even been given a draft resolution to approve. You have no information on why the Sunshine Task Force approved it. Just say, No. You can reject this one-sided abuse of your intelligence and approve the citizen's access to graphics.

Ray Hartz, Director San Francisco Open Government, said he knows what to expect because there will be claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. He said what he submitted was two PowerPoint slides and you will see in your packets that there are two or three presentations all done in the same format and that is all it takes to include his input. He said you don't have to spend \$40,000, if you have a security risk print the documents out and scan them with your own equipment. He said these are two quotes from the authors Frank Herbert and Upton Sinclair. He said if that isn't censorship, I don't know what is. He said as he said at the SOTF hearing, all he is asking for is equal treatment. He said include his Microsoft PowerPoint slides just as you do for those of whom you approve. He said perhaps it would be more accurate to say for those who approve of you. He said it is bad enough that you have to let us speak and you can't censor what we say. He said your fear is that we would be even more effective. He said he knows there is one question that will not be asked or if it is asked it will not be answered. He said why does the Commission want so badly to restrict what we have to say. He said the Commission is afraid we will show charts with real numbers showing that out of \$53 Million what the library got was 6% or 8% of the money. He said we have a group that raises money for the library but really raised the money to spend on themselves.

The following written summary was provided by the speaker, Ray Hartz. The content is neither generated by, nor subject to approval or verification of accuracy by the Library Commission.

How I expect this "discussion" to go: claims that you need to spend more than \$40,000 to comply, that there are security risks, that the law does not require you to allow access, ad nauseam. "Straw men" set up to allow you to "pretend to discuss" restrictions on public comment. As I said at the SOTF hearing: all I'm asking for is equal treatment! Include my Microsoft PowerPoint slides just as you do for those who you approve. Perhaps it would be more accurate to say for those who approve of you? It's bad enough that you have to let us speak and you can't censor what we say! Your fear is that we would be even more effective! I know there is one question that will not be asked, or if it is will not be answered: why do you want so badly to restrict what we say?

Peter Warfield, Library Users Association, said this is both a sad moment and an opportunity for this Library Commission to show some level of responsibility and of legal behavior. He said he expects no action and very little real discussion. He said the SOTF heard Mr. Hartz' complaint and the Library's defense of its actions in refusing to provide PowerPoint displays for the public. He said the Library brought their head of Facilities and the Library was practically laughed out of the room. He said the Task Force members were openly skeptical and scoffing and counting reasons given by the Library. He said the request Mr. Hartz has made is for the same treatment as other people that you have presenting including others like the Friends that have no connection with the Library. He said there would be no requirement whatsoever for any change of equipment. He said Mr. Hartz pointed out that if you are worried about security issues you can simply print out the document, scan it and include it in what you present to the public when the public speaks. He said even if what he thinks is a preposterously inflated number of \$40,000, what is equal access worth for democracy. He said you spend money on ADA requirements and you spend money on these microphones. He said \$40,000 is a speck of dust compared to your \$100 Million budget this year. He said the City Librarian could foot the bill himself with just his own discretionary fund that he gets from the Friends.

Robert B. Livingston said he has a lot of problems with this Library and there are three things he would ask for. He said first thing is anybody that comes to this Library gets on the elevator and they discover the buttons aren't lit so they have to guess which one is opening for them. He said fix the buttons in the elevator. He said second when you get out on the third floor you look out the window and you see a ledge out there with a crushed can and wet newspaper that has been there for God knows how long and it seems like people working in this environment would notice something like that and have it cleaned off. He said the last thing is if you go into any Department Store multi-level you find a menu on the inside of the elevator that directs you to what is on each floor.

Commission Discussion

President Gomez said thank you to staff for framing our discussion and giving us the information that we are able to consider. She said she would make a correction to one thing that was said by a member of the public that these particular three people who are lobbying for this audiovisual access indicate that everyone else from the public has the opportunity, including the Friends who do not have a direct connection to the Library and she thinks that is not actually true. She said the only people we have using audiovisual equipment to make presentations are those with whom we do have a direct connection, which does not include people of the general public who just want to make comments. She said while the SOTF seemed to indicate that this was an abridgement of rights, she said she does not think the Sunshine Ordinance or the Brown Act directs us that we are required to have that access to the general public. She said she does not feel like we are losing people's comments. She said they get plenty of comments that are articulated well enough for us to understand without the addition of audiovisual presentations. She said she does not feel suspicious that our City Librarian is not giving us full information from our City Attorney. She said she feels that this policy is a policy of the San Francisco Public Library Commission and no other commission is in a place to see how our policies are enacted. She said that is her understanding.

Commissioner Mall asked what other Commissions do.

Luis Herrera, City Librarian, said that Commissions that meet at City Hall that have the set up for this do allow this. He said there are others that do not.

Sue Blackman, Library Commission Secretary, said there are a couple of Commissions that do not meet at City Hall that do not allow use of the audio visual equipment and there are others that do. She said it is just a policy of each Commission.

Commissioner Mall asked if the three minute allotment that we allow for public comment includes the time for the audiovisual set up.

President Gomez said the three minutes would include that during the course of the meeting, but she said any set up would have to happen with staff prior to the meeting.

Luis Herrera, City Librarian, read Administrative Code Section 67.15 (c) ". . . 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." He said it does not speak specifically to any other permeation to that but it does specify upwards to three minutes.

Commissioner Ono asked what is involved in the \$40,000 set up.

Luis Herrera, City Librarian, said the AV laptop is currently set up on the lectern on the stage and in order to connect it to the public lectern we would have to run cables underneath the auditorium to hook it up there. He said in addition it would require modifications to allow for the laptop to be accessible to anyone with physical disabilities. He said DPW did the estimate of the costs.

Commissioner Lee said there is a comment about the two slides and that they would be missed if they did not have the slides. He said he observed that when public comment was given the copies could be given to the Secretary and they could be included in the Minutes. He said if they are included in the Minutes they would be available on the website and there would be nothing hidden and we would not need to spend the \$40,000.

President Gomez asked about the 150 word summaries.

Sue Blackman, Library Commission Secretary, said the documents brought in by the public would be referred to in the Minutes but they would not be incorporated into the Minutes like the 150 word statements are.

Commissioner Randlett asked if there is anything that prevents printed materials being available by the public in the back of the auditorium.

Sue Blackman, Library Commission Secretary, said there is nothing to prevent the public from bringing copies of printed materials and placing them at the back of the auditorium.

Commissioner Randlett said this would be a low-tech solution that if somebody had a PowerPoint they wanted everyone in the forum to see that they could print it and leave it at the back of the auditorium and advise people that if they wanted to see it, it was available and copies could be made available to the Commissioners.

Commissioner Munson said when we have an audiovisual presentation it is at the request of the Commission or City Librarian and it is part of a program that is planned to inform the public. He said this is one of the ways we communicate about the basic business of the Commission. He said that the presenters have a contract with the Library. He said if members of the audience want to make comments have their three minutes to do so. He said the Commission spends a lot of time listening to public comment and some of it is helpful and some of it is not helpful. He said there can be different opinions about what is being said. He said if the Commission wants to reserve this means of communication that is reasonable. He said if the public presents all kinds of stuff, the meetings could get very long and could be confusing to the public. He said a person that disagrees can provide written material at the back of the room and talk at the podium for three minutes. He said we are trying to get the job done.

Motion: By Commissioner Randlett, seconded by Commissioner Mall given the concern that is being raised by the public that they do not have the ability to present materials through the audio visual equipment to all those at the meeting in some type of presentation form, that they do have the ability to bring materials in a printed form and that they use their time in public comment to be able to go through the materials and that if other people have questions they can ask the speakers at the end of the meeting in the back of the room.

Action: AYES 6-0: (Lee, Gomez, Mall, Munson, Ono, and Randlett.)



# SUNSHINE ORDINANCE TASK FORCE CITY AND COUNTY OF SAN FRANCISCO DRAFT - MINUTES

Hearing Room 408 City Hall, 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4689

October 2, 2013 – 4:00 PM

#### Regular Meeting

1. Call to Order, Roll Call, and Agenda Changes.

The meeting was called to order at 4:10 p.m. Chair Grant and Members Pilpel and Hyland were noted absent. There was a quorum. Member Hyland was noted present at 4:55 p.m. Member Sims was noted absent at 7:57 p.m.

Vice Chair Fischer presided over the meeting.

Vice Chair Fischer announced a request for File No. 12059 (Item 4) be continued to November 5, 2013, by the Complainant and Respondent.

The Complainant of File No. 12058 (Item 2) requested a continuance of his hearing due to the affect of member absences on the determination of the complaint.

Member Knee, seconded by Member Washburn, moved to accept the Complainants and Respondents' request for continuance of File No. 12058 and File No. to November 6, 2013.

**Speakers:** Allen Gross expressed opposition with the members' absences; Peter Warfield requested additional information on the reason for the continuance of complaint No. 12059; Patrick Monette-Shaw requested the members uphold absences as stated in Sunshine Ordinance Task Force bylaws; Dominic Maionchi expressed reasoning of his request for continuance of Complaint No. 12058; Ray Hartz expressed six members being present would not make a fair determination on today's complaints.

#### The motion PASSED by the following vote:

Ayes: 5 - Washburn, Sims, David, Oka, Fischer

Noes: 1 - Knee

Absent: 3 – Pilpel, Hyland, Grant

2. **File No. 12058:** The Compliance and Amendments Committee has referred File No. 12058, Dominic Maionchi against Recreation and Park for allegedly failing to provide records requested pertaining to berthing contracts between the City and County of San Francisco and slip holders.

Continuance requested by Complainant. Motion Passed (Item 1).

Member Knee, seconded by Member Washburn, moved to accept the Complainants and Respondents' request for continuance of File No. 12058 and File No. to November 6, 2013.

#### RECESS 4:50 p.m. - 5:00 p.m.

#### 3. **Public Comment:**

Allen Grossman announced the Ethics Commission's new draft of regulations; Ray Hartz expressed concern with the Education, Outreach and Training Committee Chair not drafting a letter to the Clerk of the Board as determined by the committee; Peter Warfield expressed the importance of open government; Male Speaker presented misconduct of Library Commission; Patrick Monette-Shaw expressed the Ethics Commission attempt to exempt themselves from hearing complaints referred for enforcement; Female Speaker expressed the treatment of the public by City agencies who request public records.

\*The following information is provided by a speaker, pursuant to Administrative Code Section 67.16. The content is neither generated by, nor subject to approval or verification of accuracy by, the Sunshine Ordinance Task Force.

Derek Kerr, MD submitted the following additional information for Public Comment as follows:

Agenda Item (3) Public Comment (150 words):

Derek Kerr's 150 Word Summary for inclusion in body of SOTF – OCTOBER 2, 2013

Meeting Minutes

\*Burying my Commendation under the misleading agenda item "LHH Update" follows a pattern of deception. For example, Laguna Honda CEO Mivic Hirose was required to read this Commendation before the hospital's 40-member Leadership Forum. Instead, she read it to 11 members of her Executive Committee. After we complained, Hirose complied. Also, DPH Director Barbara Garcia had to retract a DPH Press Release that had labeled us "detractors" who made "false statements" about misappropriated patient funds. The first retraction was unsigned. We complained. Garcia signed the second version, but it was a Memo - not a Press Release. We complained again, and she complied. Lucky for us, we could appeal these Settlement violations to the Court. Now, we appeal to you because the Sunshine Ordinance was violated. This habitual misconduct will persist unless you monitor the Health Department and Commission for compliance.

4. **File No. 12059:** The Compliance and Amendments Committee has referred File No. 12059, Supreet Pabla, SEIU Local 1021 against Human Services Agency for allegedly failing to provide records requested relevant to the representation of the bargaining unit's employees.

Continuance requested by Complainant and Respondent. Motion Passed (Item 1).

Member Knee, seconded by Member Washburn, moved to accept the Complainants and Respondents' request for continuance of File No. 12058 and File No. to November 6, 2013.

5. **File No. 13013:** The Compliance and Amendments Committee has referred File No. 13013, of Ray Hartz Jr., against Luis Herrera, City Librarian for allegedly abridging public comment by allowing selective accessibility of library audio visual equipment.

Ray Hartz Jr., (Complainant) provided an overview of the complaint; the Library Commission continues to deny access to its equipment to present documents and /or PowerPoint presentations during its meetings as it allows for guests of the commission. The Complainant further requested the Task Force to find violations. There were no speakers in support of the Complainant. Sue Blackman (Respondent), provided an overview of the Ethics Commission defense; the Library Commission is a policy body that has the right to not allow the public to use its audio visual equipment and the commission is in compliance with the Sunshine Ordinance. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Complainant responded to questions raised throughout the discussion and further requested the Task Force to find violations. The Respondent waived rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Member Washburn, seconded by Member David, moved to find Luis Herrera, City Librarian, in violation of the Sunshine Ordinance as determined in the Order of Determination; referral to the Ethics Commission for enforcement.

**Speakers:** Patrick Monette-Shaw expressed support of the referral; Male Speaker presented PowerPoint on visual impact of audio visual presentations when allowed access to equipment; Peter Warfield expressed support of the motion.

#### The motion PASSED by the following vote:

Ayes: 7- Knee, Washburn, Sims, David, Hyland, Oka, Fischer

Absent: 2 – Pilpel, Grant

Member Washburn, seconded by Member David, moved to find Luis Herrera, City Librarian in violation of the Sunshine Ordinance as determined in the Order of Determination; referral to the Board of Supervisors for enforcement.

#### The motion PASSED by the following vote:

Ayes: 6- Knee, Washburn, Sims, Hyland, Oka, Fischer

Noes: 1 – David

Absent: 2 – Pilpel, Grant

6. **File No. 13012:** Complaint filed by Michael Fondanova, representing Glad Tidings Church against the Office of the Assessor-Recorder for allegedly failing to provide complete records associated with Glad Tidings Church and San Francisco Teen Challenge.

Item continued from September 4, 2013 meeting. Jurisdiction determined.

Michael Fondanova (Complainant) provided an overview of the complaint and requested the Task Force to find violations. There were no speakers in support of the Complainant. Margaret Sing, Assessor - Recorder's Office, (Respondent), provided an overview of the Office of the Assessor-Recorder's defense; all non-exempt documents have been handed over to the Complainant. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

#### Due to a lack of a motion, the Task Force FOUND NO VIOLATION.

7. **File No. 13021:** Complaint filed by Patrick Monette-Shaw and Maria Rivero, MD against the Public Health Commission for allegedly violating Sunshine Ordinance §§ 67.7(a), 67.7(b), and 67.9(a); failing to notice members of the public, and noticing a deficient agenda.

Member Knee, seconded by Member David, moved to find jurisdiction.

Speakers: None.

#### The motion PASSED by the following vote:

Ayes: 7 - Knee, Washburn, Sims, David, Hyland, Oka, Fischer

Absent: 2 – Pilpel, Grant

Patrick-Monette-Shaw and Maria River, MD (Complainants) provided an overview of the complaint; the intension of the Public Health Commission was to not provide a meaningful description of the item as an accommodation regarding Dr. Kerr and listed the item generically "Laguna Honda Update". The Complainants requested the Task Force to find violations. Dr. Kerr presented facts and evidence in support of the Complainants. Mark Morewitz, Executive Secretary, Public Health Commission (Respondent), provided an overview of the Public Health Commission's defense; the item was written by the advice of their City Attorney. The Commission has since taken steps to ensure future items are written in compliance with the Sunshine Ordinance. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Speakers: None.

Member Washburn, seconded by Member Oka, moved to find the Public Health Commission in violation of §§ 67.7(a), 67.7(b) and 67.9(a); referral to the Compliance and Amendments Committee to provide guidance on constructing agendas.

#### The motion PASSED by the following vote:

Ayes: 7 - Knee, Washburn, Sims, David, Hyland, Oka, Fischer

Absent: 2 – Pilpel, Grant

# RECESS 6:55 p.m. – 7:00 p.m.

8. **File No. 13024:** Complaint filed by Mica Ringel against the Planning Department for allegedly failing to provide requested records associated with the proposed development of 480 Potrero Avenue.

Member Knee, seconded by Member Sims, moved to find jurisdiction.

Speakers: None.

The motion PASSED without objection.

Mica Ringel (Complainant) provided an overview of the complaint; requested to view complete case file, through research and requests the Complainant noticed missing files not included in the original request for records. The Complainant requested the Task Force to find violations. There were no speakers in support of the Complainant. Lulu Hwang, Custodian of Records, Planning Department (Respondent), provided an overview of the Planning Department's defense; missing documents were retrieved and handed over to the Complainant on a disk. There were no speakers who offered facts and evidence in support of the Respondent. A question and answer period followed. The Respondent provided a rebuttal. The Complainant provided a rebuttal and further requested the Task Force to find violations.

Member Knee, seconded by Member Washburn, moved to find the Planning Department, in violation of the Sunshine Ordinance §§67.26 and 67.27.

Speakers: None.

#### The motion FAILED by the following vote:

Ayes: 4 - Washburn, Hyland, Oka, Fischer

Noes: 2 – Knee, David

Absent: 3 – Pilpel, Sims, Grant

Member Knee, seconded by Member Washburn, moved to find the Planning Department, in violation of the Sunshine Ordinance §§67.21(a) and 67.29-7; referral to Compliance and Amendments Committee.

Speakers: None.

#### The motion PASSED by the following vote:

Ayes: 6 – Knee, Washburn, David, Hyland, Oka, Fischer Absent: 3 – Pilpel, Sims, Grant

9. Approval of Minutes from the March 6, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

#### The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer Absent: 3 – Pilpel, Sims, Grant

10. Approval of Minutes from the April 3, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

#### The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer Absent: 3 – Pilpel, Sims, Grant

11. Approval of Minutes from the May 1, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

#### The motion PASSED by the following vote:

Ayes: 6– Knee, Washburn, David, Hyland, Oka, Fischer Absent: 3 – Pilpel, Sims, Grant

12. Approval of Minutes from the June 5, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6- Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

13. Approval of Minutes from the July 9, 2013 Special Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6- Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

14. Approval of Minutes from the August 7, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6- Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

15. Approval of Minutes from the September 4, 2013 Regular Meeting.

Member Washburn, seconded by Member Hyland, moved to CONTINUE Items 9 through 15, to the November 6, 2013 meeting.

Speaker: None.

The motion PASSED by the following vote:

Ayes: 6- Knee, Washburn, David, Hyland, Oka, Fischer

Absent: 3 – Pilpel, Sims, Grant

#### 16. Report: Compliance and Amendments Committee meeting of September 17, 2013.

Member Washburn (Chair) provided a summary of the Compliance and Amendments Committee meeting of September 17, 2013.

Speakers: None.

## 17. Report: Education, Outreach and Training Committee meeting of September 16, 2013.

Member David (Vice-Chair) provided a summary of the Education, Outreach and Training Committee meeting of September 17, 2013.

#### 18. Administrator's Report.

Report was given by Andrea Ausberry, Sunshine Ordinance Task Force Administrator.

#### 19. Announcements, Comments, Questions, and Future Agenda Items.

Member Knee announced, applications have been submitted for Seats 2 and 4 of the Task Force.

#### 20. ADJOURNMENT

Member Knee, seconded by Member David, moved to ADJOURN.

There were no speakers. The motion PASSED without objection.

There being no further business, the Task Force adjourned at the hour of 8:31 p.m.



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# ETHICS COMMISSION REGULATIONS FOR HANDLING VIOLATIONS OF THE SUNSHINE ORDINANCE

Effective Date: January 25, 2013 Includes amendments effective November 22, 2013

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#### **CHAPTER ONE**

#### I. PREAMBLE

Pursuant to San Francisco Charter, section 15.102, the San Francisco Ethics Commission promulgates these Regulations in order to ensure compliance with the San Francisco Sunshine Ordinance, San Francisco Administration Code, section 67.1, et seq. These Regulations shall apply to complaints alleging violations of the Sunshine Ordinance. All complaints alleging violations of conflict of interest, campaign finance, lobbyist, campaign consultant or other governmental ethics laws shall be handled separately under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

#### II. DEFINITIONS

For purposes of these Regulations, the following definitions shall apply:

- A. "Brown Act" means California Government Code section 54950, et seq.
- B. "Business day" means any day other than a Saturday, Sunday, City holiday, or a day on which the Commission office is closed for business.
- C. "California Public Records Act" means California Government Code section 6250, et seq.
- D. "City" means the City and County of San Francisco.
- E. "City officer" means any officer identified in San Francisco Administrative Code Section 1.50, as well as any City body composed entirely of such officers.
- F. "Commission" means the Ethics Commission.
- G. "Complaint" means a Task Force referral or a referral from the Supervisor of Records, a written document submitted directly to the Ethics Commission alleging a violation of the Sunshine Ordinance, or a matter initiated by Ethics Commission staff alleging a violation of the Sunshine Ordinance.
- H. "Complainant" means a person or entity that initiated a matter with the Task Force, Supervisor of Records, or Commission alleging a violation of the Sunshine Ordinance. "Complainant" shall also mean the Commission if the matter was initiated by Commission staff.
- I. "Custodian" means a City officer or employee having custody of any public record.

- J. "Day" means calendar day unless otherwise specifically indicated. If a deadline falls on a weekend or City holiday, the deadline shall be extended to the next business day.
- K. "Deliver" means transmit by U.S. mail or personal delivery to a person or entity. The Commission, the Executive Director, the Task Force, a Respondent, or the Complainant receiving material may consent to any other means of delivery, including delivery by e-mail or fax. In any proceeding, the Commission Chairperson may order that the delivery of briefs or other materials be accomplished by e-mail.
- L. "Elected official" shall mean the Mayor, a Member of the Board of Supervisors, City Attorney, District Attorney, Treasurer, Sheriff, Assessor, Public Defender, a Member of the Board of Education of the San Francisco Unified School District, and a Member of the Governing Board of the San Francisco Community College District.
- M. "Executive Director" means the Executive Director of the Commission or the Executive Director's designee.
- N. "Exculpatory information" means information tending to show that the Respondent has not committed the alleged violation(s).
- O. "Order of Determination" means: 1) an order from the Task Force that forms the basis of a show cause hearing for Task Force referrals made under Sunshine Ordinance section 67.30(c); or 2) a final recommendation issued by the Task Force, made pursuant to Sunshine Ordinance section 67.34, that a willful violation of the Sunshine Ordinance by an elected official or department head occurred.
- P. "Public Records" means records as defined in section 6252(e) of the California Public Records Act, which includes any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics, and/or Sunshine Ordinance section 67.20(b).
- Q. "Referral" means a document from the Task Force or Supervisor of Records to the Commission finding a violation of the Sunshine Ordinance.
- R. "Respondent" means a City officer or City employee who is alleged or identified in a complaint to have committed a violation of the Sunshine Ordinance.
- S. "Sunshine Ordinance" means San Francisco Administrative Code section 67.1, et seq.
- T. "Task Force" means the Sunshine Ordinance Task Force, established by San Francisco Administrative Code section 67.30.

U. "Willful violation" means an action or failure to act with the knowledge that such act or failure to act was a violation of the Sunshine Ordinance.

#### **CHAPTER TWO**

#### I. REFERRALS TO THE ETHICS COMMISSION

#### A. Matters to be heard in a Show Cause Hearing.

- 1. Under this Chapter, the Ethics Commission will conduct a Show Cause Hearing on any referral, as defined by these Regulations, finding:
- a. willful violations of the Sunshine Ordinance by City officers and employees (other than elected officials or department heads), or
- b. non-willful violations of the Sunshine Ordinance by elected officials, department heads, or City officers and employees.
- 2. Complaints alleging willful violations of the Sunshine Ordinance against elected officials and department heads shall be handled pursuant to Chapter Three of these regulations.

#### B. Scheduling of Show Cause Hearing.

- 1. After receipt of a referral, the Commission shall schedule a Show Cause Hearing on the matter at the next regular Ethics Commission meeting, provided that the Show Cause Hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.
- 2. In the event that four or more Commissioners will not be present at the scheduled Show Cause Hearing, the Commission may reschedule or continue to the next practicable regular Ethics Commission meeting.

#### II. SHOW CAUSE HEARING

- **A. Public Hearing.** The Show Cause Hearing shall be open to the public.
- **B.** Standard of Proof. The Respondent(s) shall have the burden to show that he or she did not commit a violation of the Sunshine Ordinance.

#### C. Hearing Procedures.

1. Each Respondent and Complainant may speak on his or her own behalf, subject to the following time limits: each Respondent shall be permitted a five-minute statement; each Complainant shall be permitted a five-minute statement; and each Respondent shall be permitted a three-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.

- 2. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Each Respondent and Complainant may submit any documents to the Commission to support his or her position. Each party's written submission shall not exceed five pages, excluding supporting documents. Any documents so provided shall also be provided to the opposing party and shall be delivered to the Commission no later than five business days prior to the scheduled hearing. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail. Commissioners may question each party or any other person providing testimony regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.
- 3. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, section I.E, then the Commission may make a decision in the party's absence.

#### D. Deliberations and Findings.

- 1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
- 2. To determine that a violation of the Sunshine Ordinance did not occur, the Commission must conclude that, based on a preponderance of the evidence, the Respondent did not commit a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.
- 3. The votes of at least three Commissioners are required to make a finding that a Respondent has not committed a violation of the Sunshine Ordinance. The finding that a Respondent did or did not commit a violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

#### E. Ethics Commission Orders.

- 1. If the Commission finds that a Respondent committed a violation of the Sunshine Ordinance, the Commission may issue orders requiring any or all of the following:
- a. the Respondent(s) to cease and desist the violation and/or produce the public record(s); and/or
- b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent(s) violated the Sunshine Ordinance; and/or
- c. The Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority of the violation.

- 2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
- 3. After issuing an order or instructing the Executive Director to act, or upon a finding of no violation, the Commission will take no further action on the matter.

#### F. Public Announcement.

Once the Commission determines that the Respondent did or did not commit a violation of the Sunshine Ordinance, the Commission will publicly announce this conclusion. The Commission's announcement may, but need not, include findings of law and fact.

#### **CHAPTER THREE**

I. COMPLAINTS ALLEGING WILLFUL VIOLATIONS OF THE
SUNSHINE ORDINANCE BY ELECTED OFFICIALS OR
DEPARTMENT HEADS
OR
COMPLAINTS FILED DIRECTLY WITH THE ETHICS COMMISSION
ALLEGING VIOLATIONS OF THE SUNSHINE ORDINANCE.

#### A. Matters heard under this Chapter.

- 1. Pursuant to Sunshine Ordinance, section 67.34, the Ethics Commission shall handle complaints alleging violations of the Sunshine Ordinance by an elected official or department head.
- 2. Pursuant to Sunshine Ordinance, section 67.35(d), if the District Attorney and/or Attorney General take no action for 40 days after receiving notification of a custodian's failure to comply with an order made pursuant to Sunshine Ordinance section 67.21(d) or (e), then the person who made the public record request may file a complaint directly with the Ethics Commission relating to that failure to comply.
- 3. Ethics Commission staff may initiate a complaint to allege a violation of the Sunshine Ordinance against any City officer or City employee.
- 4. This Chapter will govern:
- a. referrals alleging willful violations of the Sunshine Ordinance against an elected official or department head, and
- b. complaints initiated under subsections A.2 or A.3 alleging violations of the Sunshine Ordinance by any City officer or employee.
- 5. Any referral that does not allege a willful violation of the Sunshine Ordinance against an elected official or a department head shall be handled pursuant to Chapter Two of these regulations.

#### B. Scheduling of Hearing.

1. When the Executive Director receives a referral alleging a willful violation of the Sunshine Ordinance against an elected official or a department head, or when the Executive Director receives a complaint filed under subsection A.2, or when staff initiates a complaint under subsection A.3, the Executive Director shall, within 15 business days of the conclusion of his or her investigation, schedule a public hearing at the next regular meeting of the Commission, unless impracticable, provided that the hearing can be scheduled pursuant to the agenda and notice requirements as set forth in Sunshine Ordinance section 67.7 and the Brown Act.

- 2. Within 15 business days of the conclusion of his or her investigation, the Executive Director shall issue a written notice and his or her report and recommendation pursuant to Chapter Three, section II.C, to each Commission member, each Respondent, and each Complainant, including the date, time and location of the hearing.
- 3. In the case of a referral, the Executive Director also shall provide a courtesy notice and a copy of the report and recommendation to the referring body.

#### II. <u>INVESTIGATION AND RECOMMENDATION</u>

#### A. Factual Investigation.

Upon receipt of a complaint, the Executive Director shall conduct a factual investigation. The Executive Director's investigation may include, but shall not be limited to, interviews of the Respondent(s) and any witnesses, as well as the review of documentary and other evidence. The investigation shall be concluded within 30 days following the Executive Director's receipt of the complaint. The Executive Director may extend the time for good cause, including but not limited to: staffing levels; the number of other pending complaints under these Regulations or the Ethics Commission Regulations for Investigations and Enforcement Proceedings; other Ethics Commission proceedings; other staffing needs associated with pending campaigns; or the cooperation of witnesses, Complainants or Respondents. If the Executive Director extends the time for the investigation to conclude, his or her reasons for the extension shall be included in the report to the Ethics Commission.

#### B. Subpoenas.

During an investigation, the Executive Director may compel by subpoena the testimony of witnesses and the production of documents relevant to the investigation.

#### C. Report and Recommendation.

- 1. After the Executive Director has completed his or her investigation, the Executive Director shall prepare a written report and recommendation summarizing his or her factual and legal findings. The recommendation shall contain a summary of the relevant legal provisions and the evidence gathered through the Commission's investigation. To support the report and recommendation, the Executive Director may submit evidence through declaration. The report and recommendation shall not exceed ten pages excluding attachments.
- 2. The report shall recommend one of the following:
- a. that Respondent(s) willfully violated the Sunshine Ordinance;

- b. that Respondent(s) violated the Sunshine Ordinance but the violation was not willful; or
- c. that Respondent(s) did not violate the Sunshine Ordinance.

#### D. Response to the Report and Recommendation.

- 1. Each Complainant and Respondent may submit a written response to the Director's report and recommendation. The response may contain legal arguments, a summary of evidence, and any mitigating or aggravating information. In support of the response, each Complainant and Respondent may submit evidence through declaration. The response shall not exceed ten pages excluding attachments.
- 2. If any Complainant or Respondent submits a response, he or she must deliver the response to all parties no later than five business days prior to the date of the hearing. The Complainant or Respondent must deliver eight copies of the response to the Executive Director, who must then immediately distribute copies of the response(s) to the Commission and any other Complainant or Respondent. Upon mutual consent of the Complainant(s), Respondent(s), and the Executive Director, a response may be distributed by e-mail.

#### III. PUBLIC HEARING

#### A. General Rules and Procedures.

- 1. The hearing shall be open to the public.
- 2. Each Complainant and Respondent may speak on his or her own behalf, subject to the following time limits: Complainant shall be permitted a ten-minute statement; Respondent shall be permitted a ten-minute statement; and Complainant shall be permitted a five-minute rebuttal. At his or her discretion, the Commission Chairperson may allow additional testimony and may extend the time limit for the parties.
- 3. Unless otherwise decided by the Commission, formal rules of evidence shall not apply to the hearing. Commissioners may question each party regarding the allegations. The Respondent(s) and Complainant(s) may not directly question each other.
- 4. If either party fails to appear and the Commission did not grant the party a continuance or reschedule the matter under Chapter IV, Section I.E, then the Commission may make a decision in the party's absence.
- 5. Except when a complaint is staff-initiated or initiated pursuant to section 67.35(d), the Executive Director's role at the hearing will be limited to providing the report containing the legal and factual basis for his or her recommendation to the Commission and to respond to questions from the Commissioners.

#### B. Deliberations and Findings.

- 1. The Commission shall deliberate in public. Public comment on the matter shall be allowed at each hearing, in accordance with the Sunshine Ordinance and the Brown Act.
- 2. In determining whether a violation of the Sunshine Ordinance occurred, the Commission must conclude that, based on a preponderance of the evidence, the Respondent committed a violation of the Sunshine Ordinance. The Commission shall consider all the relevant circumstances surrounding the case.
- 3. The votes of at least three Commissioners are required to make a finding that a Respondent has committed a willful violation of the Sunshine Ordinance or that a Respondent has committed a non-willful violation of the Sunshine Ordinance. The finding of a willful violation or non-willful violation of the Sunshine Ordinance shall be supported by findings of fact and conclusions of law and shall be based on the entire record of the proceedings.

#### C. Ethics Commission Orders.

- 1. If the Commission finds that an elected official or a department head willfully violated the Sunshine Ordinance, the Commission shall so inform the Respondent's appointing authority, or the Mayor if Respondent is an elected official. In addition, the Commission may issue orders requiring any or all of the following if it finds that an elected official, a department head, or any City officer or City employee committed a violation of the Sunshine Ordinance:
- a. the Respondent to cease and desist the violation and/or produce the public record(s); and/or
- b. the Executive Director to post on the Ethics Commission's website the Commission's finding that the Respondent violated the Sunshine Ordinance; and/or
- c. the Executive Director to issue a warning letter to the Respondent and inform the Respondent's appointing authority, or the Mayor if the Respondent is an elected official, of the violation.
- 2. After making its decision, the Commission will instruct staff to prepare a written order reflecting the Commission's findings. The Chairperson shall be authorized to approve and sign the Commission's written order on behalf of the full Commission.
- 3. After issuing an order or instructing the Executive Director to act, the Commission will take no further action on the matter.

#### D. Finding of No Violation.

If the Commission determines that there is insufficient evidence to establish that the Respondent has committed a violation of the Sunshine Ordinance, the Commission shall publicly announce this fact. The Commission's announcement may, but need not, include findings of law and fact. Thereafter, the Commission will take no further action on the matter.

#### **CHAPTER FOUR**

#### I. MISCELLANEOUS PROVISIONS

#### A. Ex Parte Communications.

Once a complaint is filed with the Commission, no Commissioner shall engage in oral or written communications outside of a Commission meeting regarding the merits of the complaint with the Commission's staff, the Respondent(s), the Complainant(s), any member of the Task Force, the Supervisor of Records, any member of the public, or any person communicating on behalf of the Respondent(s), Complainant(s), the Supervisor of Records, or any member of the Task Force, except for communications, such as scheduling matters, generally conducted between a court and a party appearing before that court.

#### B. Access to Complaints and Related Documents and Deliberations.

Complaints, investigative files and information contained therein, shall be disclosed as necessary to the conduct of an investigation or as required by the California Public Records Act or the San Francisco Sunshine Ordinance. In order to guarantee the integrity of the investigation, internal notes taken by the Executive Director or his or her staff regarding complaints shall not be disclosed until the Commission has issued its final decision following the hearing.

#### C. Oaths and Affirmations.

The Commission may administer oaths and affirmations.

#### D. Selection of Designee by the Executive Director.

Whenever the Executive Director designates an individual other than a member of the Commission staff to perform a duty arising from the Charter or these Regulations, the Executive Director shall notify the Commission and the public of the designation no later than the next business day.

#### E. Extensions of Time and Continuances.

1. Any Respondent or Complainant may request the continuance of a hearing date in writing. The requester must deliver the written request to the Commission Chairperson, and provide a copy of the request to all other parties no later than ten business days before the date of the hearing. The Commission Chairperson shall have the discretion to consider untimely requests. The Commission Chairperson shall approve or deny the request within five business days of the submission of the request. The Commission Chairperson may grant the request upon a showing of good cause.

2. The Commission or the Commission Chairperson may reschedule a hearing at their discretion for good cause.

At any time a hearing is placed on an agenda regarding a matter under Chapter II or III of these Regulations, four or more members must be in attendance. Otherwise, the hearing shall be continued to the next regular Ethics Commission meeting, unless impracticable.

#### F. Place of Delivery.

- 1. Whenever these Regulations require delivery to the Commission, its members, or the Executive Director, delivery shall be effected at the Commission office.
- 2. Whenever these Regulations require delivery to a Respondent or Complainant, delivery shall be effective and sufficient if made by U.S. mail, personal delivery or any other means of delivery agreed upon by the parties under Chapter One, section II, subsection K, to an address reasonably calculated to give notice to and reach the Respondent or Complainant.
- 3. Delivery is effective upon the date of delivery, not the date of receipt.
- 4. Delivery of documents to the Commission may be conducted via electronic mail after a written request is made and approved by the Executive Director.

#### G. Page Limitations and Format Requirements.

Whenever these Regulations impose a page limitation, a "page" means one side of an 8½ inch by 11 inch page, with margins of at least one inch at the left, right, top and bottom of the page, typewritten and double-spaced in no smaller than 12 point type. Each page and any attachments shall be consecutively numbered.

#### H. Conclusion of Hearing.

For the purposes of these Regulations, a hearing concludes on the date on which the Commission announces its decision.

I. Complaints alleging both Sunshine Violations and Violations Handled Under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings.

If a complaint alleges both violations of the Sunshine Ordinance and violations handled under the Ethics Commission's Regulations for Investigations and Enforcement Proceedings, the allegations involving violations of the Sunshine Ordinance shall be handled separately under these Regulations. Staff shall initiate a complaint of the alleged violations of the Sunshine Ordinance under Chapter Three, Section I.A.3 of these Regulations.

# J. Certification by participating Commissioner if he or she did not attend proceedings held under Chapter II or III in their entirety.

Each Commissioner who participates in a decision, but who did not attend the hearing in its entirety, shall certify on the record that he or she personally heard the testimony (either in person or by listening to a tape or recording of the proceeding) and reviewed the evidence, or otherwise reviewed the entire record of the proceedings.

#### II. SEVERABILITY

If any provision of these Regulations, or the application thereof, to any person or circumstance, is held invalid, the validity of the remainder of the Regulations and the applicability of such provisions to other persons and circumstances shall not be affected thereby.

# Provisions of the Sunshine Ordinance - Section 67

Select Language | ▼

Article I: In General

Sec. 67.1. Findings and Purpose.

Sec. 67.2. Citation.

Article II: Public Access to Meetings

Sec. 67.3. Definitions.

Sec. 67.4. Passive Meetings.

Sec. 67.5. Meetings to Be Open and Public; Application of Brown Act.

Sec. 67.6. Conduct of Business; Time and Place for Meetings.

Sec. 67.7. Agenda Requirements; Regular Meetings.

Sec. 67.7-1. Public Notice Requirements.

Sec. 67.8. Agenda Disclosures: Closed Sessions.

Sec. 67.8-1. Additional Requirements for Closed Sessions.

Sec. 67.9. Agendas and Related Materials: Public Records.

Sec. 67.10. Closed Sessions: Permitted Topics.

Sec. 67.11. Statement of Reasons for Closed Sessions.

Sec. 67.12. Disclosure of Closed Session Discussions and Actions.

Sec. 67.13. Barriers to Attendance Prohibited.

Sec. 67.14. Video and Audio Recording, Filming and Still Photography.

Sec. 67.15. Public Testimony.

Sec. 67.16. Minutes.

Sec. 67.17. Public Comment by Members of Policy Bodies.

Article III: Public Information and Public Records

Sec. 67.20. Definitions.

Sec. 67.21. Process for Gaining Access to Public Records; Administrative Appeals.

Sec. 67.21-1. Policy Regarding Use and Purchase of Computer Systems.

Sec. 67.22. Release of Oral Public Information.

Sec. 67.23. Public Review File--Policy Body Communications.

Sec. 67.24. Public Information that Must Be Disclosed.

Sec. 67.25. Immediacy of Response.

Sec. 67.26. Withholding Kept to a Minimum.

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Sec. 67.1 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.
- (d) The right of the people to know what their government and those acting on behalf of their government are doing is fundamental to democracy, and with very few exceptions, that right supersedes any other policy interest government officials may use to prevent public access to information. Only in rare and unusual circumstances does the public benefit from allowing the business of government to be conducted in secret, and those circumstances should be carefully and narrowly defined to prevent public officials from abusing their authority.
- (e) Public officials who attempt to conduct the public"s business in secret should be held accountable for their actions. Only a strong Open Government and Sunshine Ordinance, enforced by a strong Sunshine Ordinance Task Force, can protect the public"s interest in open government.
- (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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.2, Citation.

This Chapter may be cited as the San Francisco Sunshine Ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.3. Definitions.

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

- (a) "City" shall mean the City and County of San Francisco.
- (b) "Meeting" shall mean any of the following:
- (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.
- (4) "Meeting" shall not include any of the following:
- (A) Individual contacts or conversations between a member of a policy body and another person that do not convey to the member the views or positions of other members upon the subject matter of the contact or conversation and in which the member does not solicit or encourage the restatement of the views of the other members;
- (B) The attendance of a majority of the members of a policy body at a regional, statewide or national conference, or at a meeting organized to address a topic of local community concern and open to the public, provided that a majority of the members refrains from using the occasion to collectively discuss the topic of the gathering or any other business within the subject matter jurisdiction of the City; or
- (C) The attendance of a majority of the members of a policy body at a purely social, recreational or ceremonial occasion other than one sponsored or organized by or for the policy body itself, provided that a majority of the members refrains from using the occasion to discuss any business within the subject matter jurisdiction of this body. A meal gathering of a policy body before, during or after a business meeting of the body is part of that meeting and shall be conducted only under circumstances that permit public access to hear and observe the discussion of members. Such meetings shall not be conducted in restaurants or other accommodations where public access is possible only in consideration of making a purchase or some other payment of value.
- (D) Proceedings of the Department of Social Services Child Welfare Placement and Review Committee or similar committees which exist to consider confidential information and make decisions regarding Department of Social Services clients.
- (c) "Passive meeting body" shall mean:
- (1) Advisory committees created by the initiative of a member of a policy body, the Mayor, or a department head;
- (2) Any group that meets to discuss with or advise the Mayor or any Department Head on fiscal, economic, or policy issues;
- (3) Social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited.
- (4) "Passive meeting body" shall not include a committee that consists solely of employees of the City and County of San Francisco created by the initiative of a member of a policy body, the Mayor, or a department head;

- (5) Notwithstanding the provisions of paragraph (4) above, "Passive meeting body" shall include a committee that consists solely of employees of the City and County of San Francisco when such committee is reviewing, developing, modifying, or creating city policies or procedures relating to the public health, safety, or welfare or relating to services for the homeless;
- (d) "Policy Body" shall mean:
- (1) The Board of Supervisors;
- (2) Any other board or commission enumerated in the charter;
- (3) Any board, commission, committee, or other body created by ordinance or resolution of the Board of Supervisors;
- (4) Any advisory board, commission, committee or body, created by the initiative of a policy body;
- (5) Any standing committee of a policy body irrespective of its composition.
- (6) "Policy Body" shall not include a committee which consists solely of employees of the City and County of San Francisco, unless such committee was established by charter or by ordinance or resolution of the Board of Supervisors.
- (7) Any advisory board, commission, committee, or council created by a federal, state, or local grant whose members are appointed by city officials, employees or agents. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 129-98, App. 4/17/98; Proposition G, 11/2/99)
  Sec. 67.4. Passive Meetings.
- (a) All gatherings of passive meeting bodies shall be accessible to individuals upon inquiry and to the extent possible consistent with the facilities in which they occur.
- (1) Such gatherings need not be formally noticed, except on the City's website whenever possible, although the time, place and nature of the gathering shall be disclosed upon inquiry by a member of the public, and any agenda actually prepared for the gathering shall be accessible to such inquirers as a public record.
- (2) Such gatherings need not be conducted in any particular space for the accommodation of members of the public, although members of the public shall be permitted to observe on a space available basis consistent with legal and practical restrictions on occupancy.
- (3) Such gatherings of a business nature need not provide opportunities for comment by members of the public, although the person presiding may, in his or her discretion, entertain such questions or comments from spectators as may be relevant to the business of the gathering.
- (4) Such gatherings of a social or ceremonial nature need not provide refreshments to spectators.
- (5) Gatherings subject to this subsection include the following: advisory committees or other multimember bodies created in writing or by the initiative of, or otherwise primarily formed or existing to serve as a non-governmental advisor to, a member of a policy body, the Mayor, the City Administrator, a department head, or any elective officer, and social, recreational or ceremonial occasions sponsored or organized by or for a policy body to which a majority of the body has been invited. This subsection shall not apply to a committee which consists solely of employees of the City and County of San Francisco.
- (6) Gatherings defined in subdivision (5) may hold closed sessions under circumstances allowed by this Article.
- (b) To the extent not inconsistent with state or federal law, a policy body shall include in any contract with an entity that owns, operates or manages any property in which the City has or will have an ownership interest, including a mortgage, and on which the entity performs a government function related to the furtherance of health, safety or welfare, a requirement that any meeting of the governing board of the entity to address any matter relating to the property or its government related activities on the property, or performance under the contract or grant, be conducted as provided in subdivision (a) of this section. Records made available to the governing board relating to such matters shall be likewise available to the public, at a cost not to exceed the actual cost up to 10 cents per page, or at a higher actual cost as demonstrated in writing to such governing board. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.6. Conduct Of Business; Time And Place For Meetings.

- (a) Each policy body, except for advisory bodies, shall establish by resolution or motion the time and place for holding regular meetings.
- (b) Unless otherwise required by state or federal law or necessary to inspect real property or personal property which cannot be conveniently brought within the territory of the City and County of San Francisco or to meet with residents residing on property owned by the City, or to meet with residents of another jurisdiction to discuss actions of the policy body that affect those residents, all meetings of its policy bodies shall be held within the City and County of San Francisco.
- (c) If a regular meeting would otherwise fall on a holiday, it shall instead be held on the next business day, unless otherwise rescheduled in advance.
- (d) If, because of fire, flood, earthquake or other emergency, it would be unsafe to meet at the regular meeting place, meetings may be held for the duration of the emergency at some other place specified by the policy body. The change of meeting site shall be announced, by the most rapid means of communication available at the time, in a notice to the local media who have requested written notice of special meetings pursuant to

Government Code Section 54956. Reasonable attempts shall be made to contact others regarding the change in meeting location.

- (e) Meetings of passive meeting bodies as specified in Section 67.6(d)(4) of this article shall be preceded by notice delivered personally or by mail, e-mail, or facsimile as reasonably requested at least 72 hours before the time of such meeting to each person who has requested, in writing, notice of such meeting. If the advisory body elects to hold regular meetings, it shall provide by bylaws, or whatever other rule is utilized by that advisory body for the conduct of its business, for the time and place for holding such regular meetings. In such case, no notice of regular meetings, other than the posting of an agenda pursuant to Section 67.7 of this article in the place used by the policy body which it advises, is required.
- (f) Special meetings of any policy body, including advisory bodies that choose to establish regular meeting times, may be called at any time by the presiding officer thereof or by a majority of the members thereof, by delivering personally or by mail written notice to each member of such policy body and the local media who have requested written notice of special meetings in writing. Such notice of a special meeting shall be delivered as described in (e) at least 72 hours before the time of such meeting as specified in the notice. The notice shall specify the time and place of the special meeting and the business to be transacted. No other business shall be considered at such meetings. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the presiding officer or secretary of the body or commission a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes. Each special meeting shall be held at the regular meeting place of the policy body except that the policy body may designate an alternate meeting place provided that such alternate location is specified in the notice of the special meeting; further provided that the notice of the special meeting shall be given at least 15 days prior to said special meeting being held at an alternate location. This provision shall not apply where the alternative meeting location is located within the same building as the regular meeting place.
- (g) If a meeting must be canceled, continued or rescheduled for any reason, notice of such change shall be provided to the public as soon as is reasonably possible, including posting of a cancellation notice in the same manner as described in section 67.7(c), and mailed notice if sufficient time permits. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)
- Sec. 67.7. Agenda Requirements; Regular Meetings.
- (a) At least 72 hours before a regular meeting, a policy body shall post an agenda containing a meaningful description of each item of business to be transacted or discussed at the meeting. Agendas shall specify for each item of business the proposed action or a statement the item is for discussion only. In addition, a policy body shall post a current agenda on its Internet site at least 72 hours before a regular meeting.
- (b) A description is meaningful if it is suf-ficiently clear and specific to alert a person of average intelligence and education whose interests are affected by the item that he or she may have reason to attend the meeting or seek more information on the item. The description should be brief, concise and written in plain, easily understood English. It shall refer to any explanatory documents that have been provided to the policy body in connection with an agenda item, such as correspondence or reports, and such documents shall be posted adjacent to the agenda or, if such documents are of more than one page in length, made available for public inspection and copying at a location indicated on the agenda during normal office hours.
- (c) The agenda shall specify the time and location of the regular meeting and shall be posted in a location that is freely accessible to members of the public.
- (d) No action or discussion shall be undertaken on any item not appearing on the posted agenda, except that members of a policy body may respond to statements made or questions posed by persons exercising their public testimony rights, to the extent of asking a question for clarification, providing a reference to staff or other resources for factual information, or requesting staff to report back to the body at a subsequent meeting concerning the matter raised by such testimony.
- (e) Notwithstanding subdivision (d), the policy body may take action on items of business not appearing on the posted agenda under any of the following conditions:
- (1) Upon a determination by a majority vote of the body that an accident, natural disaster or work force disruption poses a threat to public health and safety.
- (2) Upon a good faith, reasonable determination by a two-thirds vote of the body, or, if less than two-thirds of the members are present, a unanimous vote of those members present, that (A) the need to take immediate action on the item is so imperative as to threaten serious injury to the public interest if action were deferred to a subsequent special or regular meeting, or relates to a purely commendatory action, and (B) that the need for such action came to the attention of the body subsequent to the agenda being posted as specified in subdivision (a).
- (3) The item was on an agenda posted pursuant to subdivision (a) for a prior meeting of the body occurring not more than five calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken.
- (f) Each board and commission enumerated in the charter shall ensure that agendas for regular and special meetings are made available to speech and hearing impaired persons through telecommunications devices for the deaf, telecommunications relay services or equivalent systems, and, upon request, to sight impaired persons through Braille or enlarged type.
- (g) Each policy body shall ensure that notices and agendas for regular and special meetings shall include the following notice: 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 A VIOLATION.

OF THE ORDINANCE, CONTACT THE

SUNSHINE ORDINANCE TASK FORCE.

(h) Each agenda of a policy body covered by this Sunshine Ordinance shall include the address, area code and phone number, fax number, e-mail address, and a contact person"s name for the Sunshine Ordinance Task Force. Information on how to obtain a free copy of the Sunshine Ordinance shall be included on each agenda. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 185-96, App. 5/8/96; Proposition G, 11/2/99)

Sec. 67.7-1. Public Notice Requirements.

- (a) Any public notice that is mailed, posted or published by a City department, board, agency or commission to residents residing within a specific area to inform those residents of a matter that may impact their property or that neighborhood area, shall be brief, concise and written in plain, easily understood English.
- (b) The notice should inform the residents of the proposal or planned activity, the length of time planned for the activity, the effect of the proposal or activity, and a telephone contact for residents who have questions.
- (c) If the notice informs the public of a public meeting or hearing, then the notice shall state that persons who are unable to attend the public meeting or hearing may submit to the City, by the time the proceeding begins, written comments regarding the subject of the meeting or hearing, that these comments will be made a part of the official public record, and that the comments will be brought to the attention of the person or persons conducting the public meeting or hearing. The notice should also state the name and address of the person or persons to whom those written comments should be submitted. (Added by Ord. 185-96, App. 5/8/96; amended by Proposition G, 11/2/99)

Sec. 67.8. Agenda Disclosures: Closed Sessions.

- (a) In addition to the brief general description of items to be discussed or acted upon in open and public session, the agenda posted pursuant to Government Code Section 54954.1, and any call and notice delivered to the local media and posted pursuant to Government Code Section 54956 shall specify and disclose the nature of any closed sessions by providing all of the following information:
- (1) With respect to a closed session held pursuant to Government Code Section 54956.7:

LICENSE/PERMIT DETERMINATION:

applicant(s)

The space shall be used to specify the number of persons whose applications are to be reviewed.

(2) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.8:

CONFERENCE WITH REAL PROPERTY NEGOTIATOR

Property:

Person(s) negotiating:

Under negotiation:

Price: Terms of payment: Both:

The space under "Property" shall be used to list an address, including cross streets where applicable, or other description or name which permits a reasonably ready identification of each parcel or structure subject to negotiation. The space under "Person(s) negotiating" shall be used to identify the person or persons with whom negotiations concerning that property are in progress. The spaces under "Under negotiation" shall be checked off as applicable to indicate which issues are to be discussed.

(3) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54956.9, either:

CONFERENCE WITH LEGAL COUNSEL

Existing litigation:

Unspecified to protect service of process

Unspecified to protect settlement posture

or:

CONFERENCE WITH LEGAL COUNSEL

# Anticipated litigation:

### As defendant As plaintiff

The space under "Existing litigation" shall be used to specifically identify a case under discussion pursuant to subdivision (a) of Government Code Section 54956.9, including the case name, court, and case number, unless the identification would jeopardize the City"s ability to effectuate service of process upon one or more unserved parties, in which instance the space in the next succeeding line shall be checked, or unless the identification would jeopardize the City"s ability to conclude existing settlement negotiations to its advantage, in which instance the space in the next succeeding line shall be checked. If the closed session is called pursuant to subdivision (b) or (c) of Section 54956.9, the appropriate space shall be checked under "Anticipated litigation" to indicate the City"s anticipated position as defendant or plaintiff respectively. If more than one instance of anticipated litigation is to be reviewed, space may be saved by entering the number of separate instances in the "As defendant" or "As plaintiff" spaces or both as appropriate.

(4) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957, either:

## THREAT TO PUBLIC SERVICES OR FACILITIES

Name, title and agency of law enforcement officer(s) to be conferred with:

 $\alpha r$ 

PUBLIC EMPLOYEE APPOINTMENT/HIRING

Title/description of position(s) to be filled:

PUBLIC EMPLOYEE PERFORMANCE EVALUATION

Position and, in the case of a routine evaluation, name of employee(s) being evaluated:

or

PUBLIC EMPLOYEE DISMISSAL

Number of employees affected:

OT

(5) With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957.6, either:

CONFERENCE WITH NEGOTIATOR--COLLECTIVE BARGAINING

Name and title of City's negotiator:

Organization(s) representing:

Police officers, firefighters and airport police

Transit Workers

Nurses

Miscellaneous Employees

Anticipated issue(s) under negotiation:

Wages

Hours

Benefits

Working Conditions

Other (specify if known)

All

Where renegotiating a memorandum of under-standing or negotiating a successor memorandum of under-standing, the name of the memorandum of under-standing:

In case of multiple items of business under the same category, lines may be added and the location of information may be reformatted to eliminate unnecessary duplication and space, so long as the relationship of information concerning the same item is reasonably clear to the reader. As an alternative to the inclusion of lengthy lists of names or other information in the agenda, or as a means of adding items to an earlier completed agenda, the agenda may incorporate by reference separately prepared documents containing the required information, so long as copies of those documents are posted adjacent to the agenda within the time periods required by Government Code Sections 54954.2 and 54956 and provided with any mailed or delivered notices required by Sections 54954.1 or 54956. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.8-1. Additional Requirements for Closed Sessions.

(a) All closed sessions of any policy body covered by this Ordinance shall be either audio recorded or audio and video recorded in their entirety and all such recordings shall be retained for at least TEN years, or permanently where technologically and economically feasible. Closed session

recordings shall be made available whenever all rationales for closing the session are no longer applicable. Recordings of closed sessions of a policy body covered by this Ordinance, wherein the justification for the closed session is due to "anticipated litigation" shall be released to the public in accordance with any of the following provisions: TWO years after the meeting if no litigation is filed; UPON EXPIRATION of the statute of limitations for the anticipated litigation if no litigation is filed; as soon as the controversy leading to anticipated litigation is settled or concluded.

- (b) Each agenda item for a policy body covered by this ordinance that involve existing litigation shall identify the court, case number, and date the case was filed on the written agenda. For each agenda item for a group covered by this ordinance that involves anticipated litigation, the City Attorney"s Office or the policy body shall disclose at any time requested and to any member of the public whether such anticipated litigation developed into litigation and shall identify the court, case number, and date the case was filed. (Added by Proposition G, 11/2/99)
- Sec. 67.9. Agendas And Related Materials: Public Records.
- (a) Agendas of meetings and any other documents on file with the clerk of the policy body, when intended for distribution to all, or a majority of all, of the members of a policy body in connection with a matter anticipated for discussion or consideration at a public meeting shall be made available to the public. To the extent possible, such documents shall also be made available through the policy body s Internet site. However, this disclosure need not include any material exempt from public disclosure under this ordinance.
- (b) Records which are subject to disclosure under subdivision (a) and which are intended for distribution to a policy body prior to commencement of a public meeting shall be made available for public inspection and copying upon request prior to commencement of such meeting, whether or not actually distributed to or received by the body at the time of the request.
- (c) Records which are subject to disclosure under subdivision (a) and which are distributed during a public meeting but prior to commencement of their discussion shall be made available for public inspection prior to commencement of, and during, their discussion.
- (d) Records which are subject to disclosure under subdivision (a) and which are distributed during their discussion at a public meeting shall be made available for public inspection immediately or as soon thereafter as is practicable.
- (e) A policy body may charge a duplication fee of one cent per page for a copy of a public record prepared for consideration at a public meeting, unless a special fee has been established pursuant to the procedure set forth in Section 67.28(d). Neither this section nor the California Public Records Act (Government Code sections 6250 et seq.) shall be construed to limit or delay the public"s right to inspect any record required to be disclosed by that act, whether or not distributed to a policy body. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)
- Sec. 67.10. Closed Sessions: Permitted Topics.
- A policy body may, but is not required to, hold closed sessions:
- (a) With the Attorney General, district attorney, sheriff, or chief of police, or their respective deputies, on matters posing a threat to the security of public buildings or a threat to the public's right of access to public services or public facilities.
- (b) To consider the appointment, employment, evaluation of performance, or dismissal of a City employee, if the policy body has the authority to appoint, employ, or dismiss the employee, or to hear complaints or charges brought against the employee by another person or employee unless the employee complained of requests a public hearing. The body may exclude from any such public meeting, and shall exclude from any such closed meeting, during the comments of a complainant, any or all other complainants in the matter. The term "employee" as used in this section shall not include any elected official, member of a policy body or applicant for such a position, or person providing services to the City as an independent contractor or the employee thereof, including but not limited to independent attorneys or law firms providing legal services to the City for a fee rather than a salary.
- (c) Notwithstanding section (b), an Executive Compensation Committee established pursuant to a Memorandum of Understanding with the Municipal Executives Association may meet in closed session when evaluating the performance of an individual officer or employee subject to that Memorandum of Understanding or when establishing performance goals for such an officer or employee where the setting of such goals requires discussion of that individual"s performance.
- (d) Based on advice of its legal counsel, and on a motion and vote in open session to assert the attorney-client privilege, to confer with, or receive advice from, its legal counsel regarding pending litigation when discussion in open session concerning those matters would likely and unavoidably prejudice the position of the City in that litigation. Litigation shall be considered pending when any of the following circumstances exist:
- (1) An adjudicatory proceeding before a court, administrative body exercising its adjudicatory authority, hearing officer, or arbitrator, to which the City is a party, has been initiated formally; or,
- (2) A point has been reached where, in the opinion of the policy body on the advice of its legal counsel, based on existing facts and circumstances, there is a significant exposure to litigation against the City, or the body is meeting only to decide whether a closed session is authorized pursuant to that advice or, based on those facts and circumstances, the body has decided to initiate or is deciding whether to initiate litigation.
- (3) A closed session may not be held under this section to consider the qualifications or engagement of an independent contract attorney or law firm, for litigation services or otherwise.
- (e) With the City's designated representatives regarding matters within the scope of collective bargaining or meeting and conferring with public employee organizations when a policy body has authority over such matters.

- (1) Such closed sessions shall be for the purpose of reviewing the City"s position and instructing its designated representatives and may take place solely prior to and during active consultations and discussions between the City"s designated representatives and the representatives of employee organizations or the unrepresented employees. A policy body shall not discuss compensation or other contractual matters in closed session with one or more employees directly interested in the outcome of the negotiations.
- (2) In addition to the closed sessions authorized by subsection 67.10(e)(1), a policy body subject to Government Code Section 3501 may hold closed sessions with its designated representatives on mandatory subjects within the scope of representation of its represented employees, as determined pursuant to Section 3504. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 37-98, App. 1/23/98; Proposition G, 11/2/99)

Sec. 67.11. Statement Of Reasons For Closed Sessions.

Prior to any closed session, a policy body shall state the general reason or reasons for the closed session, and shall cite the statutory authority, including the specific section and subdivision, or other legal authority under which the session is being held. In the closed session, the policy body may consider only those matters covered in its statement. In the case of regular and special meetings, the statement shall be made in the form of the agenda disclosures and specifications required by Section 67.8 of this article. In the case of adjourned and continued meetings, the statement shall be made with the same disclosures and specifications required by Section 67.8 of this article, as part of the notice provided for the meeting.

In the case of an item added to the agenda as a matter of urgent necessity, the statement shall be made prior to the determination of urgency and with the same disclosures and specifications as if the item had been included in the agenda pursuant to Section 67.8 of this article. Nothing in this section shall require or authorize a disclosure of information prohibited by state or federal law. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.12. Disclosure Of Closed Session Discussions And Actions.

- (a) After every closed session, a policy body may in its discretion and in the public interest, disclose to the public any portion of its discussion that is not confidential under federal or state law, the Charter, or non-waivable privilege. The body shall, by motion and vote in open session, elect either to disclose no information or to disclose the information that a majority deems to be in the public interest. The disclosure shall be made through the presiding officer of the body or such other person, present in the closed session, whom he or she designates to convey the information.
- (b) A policy body shall publicly report any action taken in closed session and the vote or abstention of every member present thereon, as follows:
- (1) Real Property Negotiations: Approval given to a policy body"s negotiator concerning real estate negotiations pursuant to Government Code Section 54956.8 shall be reported as soon as the agreement is final. If its own approval renders the agreement final, the policy body shall report that approval, the substance of the agreement and the vote thereon in open session immediately. If final approval rests with another party to the negotiations, the body shall disclose the fact of that approval, the substance of the agreement and the body"s vote or votes thereon upon inquiry by any person, as soon as the other party or its agent has informed the body of its approval. If notwithstanding the final approval there are conditions precedent to the final consummation of the transaction, or there are multiple contiguous or closely located properties that are being considered for acquisition, the document referred to in subdivision (b) of this section need not be disclosed until the condition has been satisfied or the agreement has been reached with respect to all the properties, or both.
- (2) Litigation: Direction or approval given to the body"s legal counsel to prosecute, defend or seek or refrain from seeking appellate review or relief, or to otherwise enter as a party, intervenor or amicus curiae in any form of litigation as the result of a consultation pursuant to Government Code Section 54956.9 shall be reported in open session as soon as given, or at the first meeting after an adverse party has been served in the matter if immediate disclosure of the City"s intentions would be contrary to the public interest. The report shall identify the adverse party or parties, any co-parties with the City, any existing claim or order to be defended against or any factual circumstances or contractual dispute giving rise to the City"s complaint, petition or other litigation initiative.
- (3) Settlement: A policy body shall neither solicit nor agree to any term in a settlement which would preclude the release of the text of the settlement itself and any related documentation communicated to or received from the adverse party or parties. Any written settlement agreement and any documents attached to or referenced in the settlement agreement shall be made publicly available at least 10 calendar days before the meeting of the policy body at which the settlement is to be approved to the extent that the settlement would commit the City or a department thereof to adopting, modifying, or discontinuing an existing policy, practice or program or otherwise acting other than to pay an amount of money less than \$50,000. The agenda for any meeting in which a settlement subject to this section is discussed shall identify the names of the parties, the case number, the court, and the material terms of the settlement. Where the disclosure of documents in a litigation matter that has been settled could be detrimental to the city"s interest in pending litigation arising from the same facts or incident and involving a party not a party to or otherwise aware of the settlement, the documents required to be disclosed by subdivision (b) of this section need not be disclosed until the other case is settled or otherwise finally concluded.
- (4) Employee Actions: Action taken to appoint, employ, dismiss, transfer or accept the resignation of a public employee in closed session pursuant to Government Code Section 54957 shall be reported immediately in a manner that names the employee, the action taken and position affected and, in the case of dismissal for a violation of law or of the policy of the City, the reason for dismissal. "Dismissal" within the meaning of this ordinance includes any termination of employment at the will of the employer rather than of the employee, however characterized. The proposed terms of any separation agreement shall be immediately disclosed as soon as presented to the body, and its final terms shall be immediately disclosed upon approval by the body.
- (5) Collective Bargaining: Any collectively bargained agreement shall be made publicly available at least 15 calendar days before the meeting of

the policy body to which the agreement is to be reported.

- (c) Reports required to be made immediately may be made orally or in writing, but shall be supported by copies of any contracts, settlement agreements, or other documents related to the transaction that were finally approved or adopted in the closed session and that embody the information required to be disclosed immediately shall be provided to any person who has made a written request regarding that item following the posting of the agenda, or who has made a standing request for all such documentation as part of a request for notice of meetings pursuant to Government Code Sections 54954.1 or 54956.
- (d) A written summary of the information required to be immediately reported pursuant to this section, or documents embodying that information, shall be posted by the close of business on the next business day following the meeting, in the place where the meeting agendas of the body are posted. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.13. Barriers To Attendance Prohibited.

- (a) No policy body shall conduct any meeting, conference or other function in any facility that excludes persons on the basis of actual or presumed class identity or characteristics, or which is inaccessible to persons with physical disabilities, or where members of the public may not be present without making a payment or purchase. Whenever the Board of Supervisors, a board or commission enumerated in the charter, or any committee thereof anticipates that the number of persons attending the meeting will exceed the legal capacity of the meeting room, any public address system used to amplify sound in the meeting room shall be extended by supplementary speakers to permit the overflow audience to listen to the proceedings in an adjacent room or passageway, unless such supplementary speakers would disrupt the operation of a City office.
- (b) Each board and commission enumerated in the charter shall provide sign language interpreters or note-takers at each regular meeting, provided that a request for such services is communicated to the secretary or clerk of the board or commission at least 48 hours before the meeting, except for Monday meetings, for which the deadline shall be 4 p.m. of the last business day of the preceding week.
- (c) Each board and commission enumerated in the charter shall ensure that accessible seating for persons with disabilities, including those using wheelchairs, is made available for each regular and special meeting.
- (d) Each board and commission enumerated in the charter shall include on the agenda for each regular and special meeting the following statement: "In order to assist the City"s efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals."
- (e) The Board of Supervisors shall seek to provide translators at each of its regular meetings and all meetings of its committees for each language requested, where the translation is necessary to enable San Francisco residents with limited English proficiency to participate in the proceedings provided that a request for such translation services is communicated to the Clerk of the Board of Supervisors at least 48 hours before the meeting. For meetings on a Monday or a Tuesday, the request must be made by noon of the last business day of the preceding week. The Clerk of the Board of Supervisors shall first solicit volunteers from the ranks of City employees and/or from the community to serve as translators. If volunteers are not available the Clerk of the Board of Supervisors may next solicit translators from non-profit agencies, which may be compensated. If these options do not provide the necessary translation services, the Clerk may employ professional translators. The unavailability of a translator shall not affect the ability of the Board of Supervisors or its committees to deliberate or vote upon any matter presented to them. In any calendar year in which the costs to the City for providing translator services under this subsection exceeds \$20,000, the Board of Supervisors shall, as soon as possible thereafter, review the provisions of this subsection. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 482-96, App. 12/20/96; Proposition G, 11/2/99)

Sec. 67.14. Video and Audio Recording, Filming And Still Photography.

- (a) Any person attending an open and public meeting of a policy body shall have the right to record the proceedings with an audio or video recorder or a still or motion picture camera, or to broadcast the proceedings, in the absence of a reasonable finding of the policy body that the recording or broadcast cannot continue without such noise, illumination or obstruction of view as to constitute a persistent disruption of the proceedings.
- (b) Each board and commission enumerated in the charter shall audio record each regular and special meeting. Each such audio recording, and any audio or video recording of a meeting of any other policy body made at the direction of the policy body shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. Inspection of any such recording shall be provided without charge on an appropriate play back device made available by the City. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99).
- (c) Every City policy body, agency or department shall audio or video record every noticed regular meeting, special meeting, or hearing open to the public held in a City Hall hearing room that is equipped with audio or video recording facilities, except to the extent that such facilities may not be available for technical or other reasons. Each such audio or video recording shall be a public record subject to inspection pursuant to the California Public Records Act (Government Code Section 6250 et seq.), and shall not be erased or destroyed. The City shall make such audio or video recording available in digital form at a centralized location on the City's web site (www.sfgov.org) within seventy-two hours of the date of the meeting or hearing and for a period of at least two years after the date of the meeting or hearing. Inspection of any such recording shall also be provided without charge on an appropriate play back device made available by the City. This subsection (c) shall not be construed to limit or in any way modify the duties created by any other provision of this article, including but not limited to the requirements for recording closed sessions as stated in Section 67.8-1 and for recording meetings of boards and commissions enumerated in the Charter as stated in subsection (b) above. (Added by Ord. 80-08, App. 5/13/08)

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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. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.16. Minutes.

The clerk or secretary of each board and commission enumerated in the charter shall record the minutes for each regular and special meeting of the board or commission. The minutes shall state the time the meeting was called to order, the names of the members attending the meeting, the roll call vote on each matter considered at the meeting, the time the board or commission began and ended any closed session, the names of the members and the names, and titles where applicable, of any other persons attending any closed session, a list of those members of the public who spoke on each matter if the speakers identified themselves, whether such speakers supported or opposed the matter, a brief summary of each person"s statement during the public comment period for each agenda item, and the time the meeting was adjourned. 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 draft minutes of each meeting shall be available for inspection and copying upon request no later than ten working days after the meeting. The officially adopted minutes shall be available for inspection and copying upon request no later than ten working days after the meeting at which the minutes are adopted. Upon request, minutes required to be produced by this section shall be made available in Braille or increased type size. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.17. Public Comment By Members Of Policy Bodies.

Every member of a policy body retains the full constitutional rights of a citizen to comment publicly on the wisdom or propriety of government actions, including those of the policy body of which he or she is a member. Policy bodies shall not sanction, reprove or deprive members of their rights as elected or appointed officials for expressing their judgments or opinions, including those which deal with the perceived inconsistency of non-public discussions, communications or actions with the requirements of state or federal law or of this ordinance. The release of specific factual information made confidential by state or federal law including, but not limited to, the privilege for confidential attorney-client communications, may be the basis for a request for injunctive or declaratory relief, of a complaint to the Mayor seeking an accusation of misconduct, or both. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.20. Definitions.

Whenever in this article the following words or phrases are used, they shall mean:

- (a) "Department" shall mean a department of the City and County of San Francisco.
- (b) "Public Information" shall mean the content of "public records" as defined in the California Public Records Act (Government Code Section 6252), whether provided in documentary form or in an oral communication. "Public Information" shall not include "computer software" developed by the City and County of San Francisco as defined in the California Public Records Act (Government Code Section 6254.9).
- (c) "Supervisor of Records" shall mean the City Attorney. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 375, App. 9/30/96; Proposition G, 11/2/99)

Sec. 67.21. Process For Gaining Access To Public Records; Administrative Appeals.

(a) Every person having custody of any public record or public information, as defined herein, (hereinafter referred to as a custodian of a public record) shall, at normal times and during normal and reasonable hours of operation, without unreasonable delay, and without requiring an appointment, permit the public record, or any segregable portion of a record, to be inspected and examined by any person and shall furnish one copy thereof upon payment of a reasonable copying charge, not to exceed the lesser of the actual cost or ten cents per page.

- (b) A custodian of a public record shall, as soon as possible and within ten days following receipt of a request for inspection or copy of a public record, comply with such request. Such request may be delivered to the office of the custodian by the requester orally or in writing by fax, postal delivery, or e-mail. If the custodian believes the record or information requested is not a public record or is exempt, the custodian shall justify withholding any record by demonstrating, in writing as soon as possible and within ten days following receipt of a request, that the record in question is exempt under express provisions of this ordinance.
- (c) A custodian of a public record shall assist a requester in identifying the existence, form, and nature of any records or information maintained by, available to, or in the custody of the custodian, whether or not the contents of those records are exempt from disclosure and shall, when requested to do so, provide in writing within seven days following receipt of a request, a statement as to the existence, quantity, form and nature of records relating to a particular subject or questions with enough specificity to enable a requester to identify records in order to make a request under (b). A custodian of any public record, when not in possession of the record requested, shall assist a requester in directing a request to the proper office or staff person.
- (d) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b), the person making the request may petition the supervisor of records for a determination whether the record requested is public. The supervisor of records shall inform the petitioner, as soon as possible and within 10 days, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination by the supervisor of records that the record is public, the supervisor of records shall immediately order the custodian of the public record to comply with the person"s request. If the custodian refuses or fails to comply with any such order within 5 days, the supervisor of records shall notify the district attorney or the attorney general who shall take whatever measures she or he deems necessary and appropriate to insure compliance with the provisions of this ordinance.
- (e) If the custodian refuses, fails to comply, or incompletely complies with a request described in (b) above or if a petition is denied or not acted on by the supervisor of public records, the person making the request may petition the Sunshine Task Force for a determination whether the record requested is public. The Sunshine Task Force shall inform the petitioner, as soon as possible and within 2 days after its next meeting but in no case later than 45 days from when a petition in writing is received, of its determination whether the record requested, or any part of the record requested, is public. Where requested by the petition, and where otherwise desirable, this determination shall be in writing. Upon the determination that the record is public, the Sunshine Task Force shall immediately order the custodian of the public record to comply with the person"s request. If the custodian refuses or fails to comply with any such order within 5 days, the Sunshine Task Force shall notify the district attorney or the attorney general who may take whatever measures she or he deems necessary to insure compliance with the provisions of this ordinance. The Board of Supervisors and the City Attorney"s office shall provide sufficient staff and resources to allow the Sunshine Task Force to fulfill its duties under this provision. Where requested by the petition, the Sunshine Task Force may conduct a public hearing concerning the records request denial. An authorized representative of the custodian of the public records requested shall attend any hearing and explain the basis for its decision to withhold the records requested.
- (f) The administrative remedy provided under this article shall in no way limit the availability of other administrative remedies provided to any person with respect to any officer or employee of any agency, executive office, department or board; nor shall the administrative remedy provided by this section in any way limit the availability of judicial remedies otherwise available to any person requesting a public record. If a custodian of a public record refuses or fails to comply with the request of any person for inspection or copy of a public record or with an administrative order under this section, the superior court shall have jurisdiction to order compliance.
- (g) In any court proceeding pursuant to this article there shall be a presumption that the record sought is public, and the burden shall be upon the custodian to prove with specificity the exemption which applies.
- (h) On at least an annual basis, and as otherwise requested by the Sunshine Ordinance Task Force, the supervisor of public records shall prepare a tally and report of every petition brought before it for access to records since the time of its last tally and report. The report shall at least identify for each petition the record or records sought, the custodian of those records, the ruling of the supervisor of public records, whether any ruling was overturned by a court and whether orders given to custodians of public records were followed. The report shall also summarize any court actions during that period regarding petitions the Supervisor has decided. At the request of the Sunshine Ordinance Task Force, the report shall also include copies of all rulings made by the supervisor of public records and all opinions issued.
- (i) The San Francisco City Attorney"s office shall act to protect and secure the rights of the people of San Francisco to access public information and public meetings and shall not act as legal counsel for any city employee or any person having custody of any public record for purposes of denying access to the public. The City Attorney may publish legal opinions in response to a request from any person as to whether a record or information is public. All communications with the City Attorney"s Office with regard to this ordinance, including petitions, requests for opinion, and opinions shall be public records.
- (j) Notwithstanding the provisions of this section, the City Attorney may defend the City or a City Employee in litigation under this ordinance that is actually filed in court to any extent required by the City Charter or California Law.
- (k) Release of documentary public information, whether for inspection of the original or by providing a copy, shall be governed by the California Public Records Act (Government Code Section 6250 et seq.) in particulars not addressed by this ordinance and in accordance with the enhanced disclosure requirements provided in this ordinance.
- (1) Inspection and copying of documentary public information stored in electronic form shall be made available to the person requesting the information in any form requested which is available to or easily generated by the department, its officers or employees, including disk, tape,

printout or monitor at a charge no greater than the cost of the media on which it is duplicated. Inspection of documentary public information on a computer monitor need not be allowed where the information sought is necessarily and unseparably intertwined with information not subject to disclosure under this ordinance. Nothing in this section shall require a department to program or reprogram a computer to respond to a request for information or to release information where the release of that information would violate a licensing agreement or copyright law. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

Sec. 67.21-1. Policy Regarding Use And Purchase Of Computer Systems.

- (a) It is the policy of the City and County of San Francisco to utilize computer technology in order to reduce the cost of public records management, including the costs of collecting, maintaining, and disclosing records subject to disclosure to members of the public under this section. To the extent that it is technologically and economically feasible, departments that use computer systems to collect and store public records shall program and design these systems to ensure convenient, efficient, and economical public access to records and shall make public records easily accessible over public networks such as the Internet.
- (b) Departments purchasing new computer systems shall attempt to reach the following goals as a means to achieve lower costs to the public in connection with the public disclosure of records:
- (1) Implementing a computer system in which exempt information is segregated or filed separately from otherwise disclosable information.
- (2) Implementing a system that permits reproduction of electronic copies of records in a format that is generally recognized as an industry standard format.
- (3) Implementing a system that permits making records available through the largest non-profit, non-proprietary public computer network, consistent with the requirement for security of information. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 253-96, App. 6/19/96; Proposition G, 11/2/99)

Sec. 67.22. Release Of Oral Public Information.

Release of oral public information shall be accomplished as follows:

- (a) Every department head shall designate a person or persons knowledgable about the affairs of the department, to provide information, including oral information, to the public about the department so operations, plans, policies and positions. The department head may designate himself or herself for this assignment, but in any event shall arrange that an alternate be available for this function during the absence of the person assigned primary responsibility. If a department has multiple bureaus or divisions, the department may designate a person or persons for each bureau or division to provide this information.
- (b) The role of the person or persons so designated shall be to provide information on as timely and responsive a basis as possible to those members of the public who are not requesting information from a specific person. This section shall not be interpreted to curtail existing informal contacts between employees and members of the public when these contacts are occasional, acceptable to the employee and the department, not disruptive of his or her operational duties and confined to accurate information not confidential by law.
- (c) No employee shall be required to respond to an inquiry or inquiries from an individual if it would take the employee more than fifteen minutes to obtain the information responsive to the inquiry or inquiries.
- (d) Public employees shall not be discouraged from or disciplined for the expression of their personal opinions on any matter of public concern while not on duty, so long as the opinion (1) is not represented as that of the department and does not misrepresent the department position; and (2) does not disrupt coworker relations, impair discipline or control by superiors, erode a close working relationship premised on personal loyalty and confidentiality, interfere with the employee"s performance of his or her duties or obstruct the routine operation of the office in a manner that outweighs the employee"s interests in expressing that opinion. In adopting this subdivision, the Board of Supervisors intends merely to restate and affirm court decisions recognizing the First Amendment rights enjoyed by public employees. Nothing in this section shall be construed to provide rights to City employees beyond those recognized by courts, now or in the future, under the First Amendment, or to create any new private cause of action or defense to disciplinary action.
- (e) Notwithstanding any other provisions of this ordinance, public employees shall not be discouraged from or disciplined for disclosing any information that is public information or a public record to any journalist or any member of the public. Any public employee who is disciplined for disclosing public information or a public record shall have a cause of action against the City and the supervisor imposing the discipline. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.23. Public Review File-Policy Body Communications.

- (a) The clerk of the Board of Supervisors and the clerk of each board and commission enumerated in the charter shall maintain a file, accessible to any person during normal office hours, containing a copy of any letter, memorandum or other communication which the clerk has distributed to or received from a quorum of the policy body concerning a matter calendared by the body within the previous 30 days or likely to be calendared within the next 30 days, irrespective of subject matter, origin or recipient, except commercial solicitations, periodical publications or communications exempt from disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and not deemed disclosable under Section 67.24 of this article.
- (b) Communications, as described in subsection (a), sent or received in the last three business days shall be maintained in chronological order in the office of the department head or at a place nearby, clearly designated to the public. After documents have been on file for two full days, they may be removed, and, in the discretion of the board or commission, placed in a monthly chronological file.

(c) Multiple-page reports, studies or analyses which are accompanied by a letter or memorandum of transmittal need not be included in the file so long as the letter or memorandum of transmittal is included. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)
Sec. 67.24. Public Information That Must Be Disclosed.

Notwithstanding a department's legal discretion to withhold certain information under the California Public Records Act, the following policies shall govern specific types of documents and information and shall provide enhanced rights of public access to information and records:

- (a) Drafts and Memoranda.
- (1) Except as provided in subparagraph (2), no preliminary draft or department memorandum, whether in printed or electronic form, shall be exempt from disclosure under Government Code Section 6254, subdivision (a) or any other provision. If such a document is not normally kept on file and would otherwise be disposed of, its factual content is not exempt under subdivision (a). Only the recommendation of the author may, in such circumstances, be withheld as exempt.
- (2) Draft versions of an agreement being negotiated by representatives of the City with some other party need not be disclosed immediately upon creation but must be preserved and made available for public review for 10 days prior to the presentation of the agreement for approval by a policy body, unless the body finds that and articulates how the public interest would be unavoidably and substantially harmed by compliance with this 10 day rule, provided that policy body as used in this subdivision does not include committees. In the case of negotiations for a contract, lease or other business agreement in which an agency of the City is offering to provide facilities or services in direct competition with other public or private entities that are not required by law to make their competing proposals public or do not in fact make their proposals public, the policy body may postpone public access to the final draft agreement until it is presented to it for approval.
- (b) Litigation Material.
- (1) Notwithstanding any exemptions otherwise provided by law, the following are public records subject to disclosure under this Ordinance:
- (i) A pre-litigation claim against the City;
- (ii) A record previously received or created by a department in the ordinary course of business that was not attorney/client privileged when it was previously received or created;
- (iii) Advice on compliance with, analysis of, an opinion concerning liability under, or any communication otherwise concerning the California Public Records Act, the Ralph M. Brown Act, the Political Reform Act, any San Francisco governmental ethics code, or this Ordinance.
- (2) Unless otherwise privileged under California law, when litigation is finally adjudicated or otherwise settled, records of all communications between the department and the adverse party shall be subject to disclosure, including the text and terms of any settlement.
- (c) Personnel Information. None of the following shall be exempt from disclosure under Government Code Section 6254, subdivision (c), or any other provision of California Law where disclosure is not forbidden:
- (1) The job pool characteristics and employment and education histories of all successful job applicants, including at a minimum the following information as to each successful job applicant:
- (i) Sex, age and ethnic group;
- (ii) Years of graduate and undergraduate study, degree(s) and major or discipline;
- (iii) Years of employment in the private and/or public sector;
- (iv) Whether currently employed in the same position for another public agency.
- (v) Other non-identifying particulars as to experience, credentials, aptitudes, training or education entered in or attached to a standard employment application form used for the position in question.
- (2) The professional biography or curriculum vitae of any employee, provided that the home address, home telephone number, social security number, age, and marital status of the employee shall be redacted.
- (3) The job description of every employment classification.
- (4) The exact gross salary and City-paid benefits available to every employee.
- (5) Any memorandum of understanding between the City or department and a recognized employee organization.
- (6) The amount, basis, and recipient of any performance-based increase in compensation, benefits, or both, or any other bonus, awarded to any employee, which shall be announced during the open session of a policy body at which the award is approved.
- (7) The record of any confirmed misconduct of a public employee involving personal dishonesty, misappropriation of public funds, resources or benefits, unlawful discrimination against another on the basis of status, abuse of authority, or violence, and of any discipline imposed for such misconduct.
- (d) Law Enforcement Information.

The District Attorney, Chief of Police, and Sheriff are encouraged to cooperate with the press and other members of the public in allowing access to local records pertaining to investigations, arrests, and other law enforcement activity. However, no provision of this ordinance is intended to abrogate or interfere with the constitutional and statutory power and duties of the District Attorney and Sheriff as interpreted under Government Code section 25303, or other applicable state law or judicial decision. Records pertaining to any investigation, arrest or other law

enforcement activity shall be disclosed to the public once the District Attorney or court determines that a prosecution will not be sought against the subject involved, or once the statute of limitations for filing charges has expired, whichever occurs first. Notwithstanding the occurrence of any such event, individual items of information in the following categories may be segregated and withheld if, on the particular facts, the public interest in nondisclosure clearly and substantially outweighs the public interest in disclosure:

- (1) The names of juvenile witnesses (whose identities may nevertheless be indicated by substituting a number or alphabetical letter for each individual interviewed);
- (2) Personal or otherwise private information related to or unrelated to the investigation if disclosure would constitute an unwarranted invasion of privacy;
- (3) The identity of a confidential source;
- (4) Secret investigative techniques or procedures;
- (5) Information whose disclosure would endanger law enforcement personnel; or
- (6) Information whose disclosure would endanger the successful completion of an investigation where the prospect of enforcement proceedings is concrete and definite.

This subdivision shall not exempt from disclosure any portion of any record of a concluded inspection or enforcement action by an officer or department responsible for regulatory protection of the public health, safety, or welfare.

- (e) Contracts, Bids and Proposals
- (1) Contracts, contractors" bids, responses to requests for proposals and all other records of communications between the department and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person"s or organization"s net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. All bidders and contractors shall be advised that information provided which is covered by this subdivision will be made available to the public upon request. Immediately after any review or evaluation or rating of responses to a Request for Proposal ("RFP") has been completed, evaluation forms and score sheets and any other documents used by persons in the RFP evaluation or contractor selection process shall be available for public inspection. The names of scorers, graders or evaluators, along with their individual ratings, comments, and score sheets or comments on related documents, shall be made immediately available after the review or evaluation of a RFP has been completed.
- (2) Notwithstanding the provisions of this subdivision or any other provision of this ordinance, the Director of Public Health may withhold from disclosure proposed and final rates of payment for managed health care contracts if the Director determines that public disclosure would adversely affect the ability of the City to engage in effective negotiations for managed health care contracts. The authority to withhold this information applies only to contracts pursuant to which the City (through the Department of Public Health) either pays for health care services or receives compensation for providing such services, including mental health and substance abuse services, to covered beneficiaries through a pre-arranged rate of payment. This provision also applies to rates for managed health care contracts for the University of California, San Francisco, if the contract involves beneficiaries who receive services provided jointly by the City and University. This provision shall not authorize the Director to withhold rate information from disclosure for more than three years.
- (3) During the course of negotiations for:
- (i) personal, professional, or other contractual services not subject to a competitive process or where such a process has arrived at a stage where there is only one qualified or responsive bidder;
- (ii) leases or permits having total anticipated revenue or expense to the City and County of five hundred thousand dollars (\$500,000) or more or having a term of ten years or more; or
- (iii) any franchise agreements,
- all documents exchanged and related to the position of the parties, including draft contracts, shall be made available for public inspection and copying upon request. In the event that no records are prepared or exchanged during negotiations in the above-mentioned categories, or the records exchanged do not provide a meaningful representation of the respective positions, the city attorney or city representative familiar with the negotiations shall, upon a written request by a member of the public, prepare written summaries of the respective positions within five working days following the final day of negotiation of any given week. The summaries will be available for public inspection and copying. Upon completion of negotiations, the executed contract, including the dollar amount of said contract, shall be made available for inspection and copying. At the end of each fiscal year, each City department shall provide to the Board of Supervisors a list of all sole source contracts entered into during the past fiscal year. This list shall be made available for inspection and copying as provided for elsewhere in this Article.
- (f) Budgets and Other Financial Information. Budgets, whether tentative, proposed or adopted, for the City or any of its departments, programs, projects or other categories, and all bills, claims, invoices, vouchers or other records of payment obligations as well as records of actual disbursements showing the amount paid, the payee and the purpose for which payment is made, other than payments for social or other services whose records are confidential by law, shall not be exempt from disclosure under any circumstances.
- (g) Neither the City nor any office, employee, or agent thereof may assert California Public Records Act Section 6255 or any similar provision as the basis for withholding any documents or information requested under this ordinance.
- (h) Neither the City nor any office, employee, or agent thereof may assert an exemption for withholding for any document or information based

on a "deliberative process" exemption, either as provided by California Public Records Act Section 6255 or any other provision of law that does not prohibit disclosure.

(i) Neither the City, nor any office, employee, or agent thereof, may assert an exemption for withholding for any document or information based on a finding or showing that the public interest in withholding the information outweighs the public interest in disclosure. All withholdings of documents or information must be based on an express provision of this ordinance providing for withholding of the specific type of information in question or on an express and specific exemption provided by California Public Records Act that is not forbidden by this ordinance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 292-95, App. 9/8/95; Ord. 240-98, App. 7/17/98; Proposition G, 11/2/99)

Sec. 67.25. Immediacy Of Response.

- (a) Notwithstanding the 10-day period for response to a request permitted in Government Code Section 6256 and in this Article, a written request for information described in any category of non-exempt public information shall be satisfied no later than the close of business on the day following the day of the request. This deadline shall apply only if the words "Immediate Disclosure Request" are placed across the top of the request and on the envelope, subject line, or cover sheet in which the request is transmitted. Maximum deadlines provided in this article are appropriate for more extensive or demanding requests, but shall not be used to delay fulfilling a simple, routine or otherwise readily answerable request.
- (b) If the voluminous nature of the information requested, its location in a remote storage facility or the need to consult with another interested department warrants an extension of 10 days as provided in Government Code Section 6456.1, the requester shall be notified as required by the close of business on the business day following the request.
- (c) The person seeking the information need not state his or her reason for making the request or the use to which the information will be put, and requesters shall not be routinely asked to make such a disclosure. Where a record being requested contains information most of which is exempt from disclosure under the California Public Records Act and this article, however, the City Attorney or custodian of the record may inform the requester of the nature and extent of the non-exempt information and inquire as to the requester"s purpose for seeking it, in order to suggest alternative sources for the information which may involve less redaction or to otherwise prepare a response to the request.
- (d) Notwithstanding any provisions of California Law or this ordinance, in response to a request for information describing any category of non-exempt public information, when so requested, the City and County shall produce any and all responsive public records as soon as reasonably possible on an incremental or "rolling" basis such that responsive records are produced as soon as possible by the end of the same business day that they are reviewed and collected. This section is intended to prohibit the withholding of public records that are responsive to a records request until all potentially responsive documents have been reviewed and collected. Failure to comply with this provision is a violation of this article. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.26. Withholding Kept To A Minimum.

No record shall be withheld from disclosure in its entirety unless all information contained in it is exempt from disclosure under express provisions of the California Public Records Act or of some other statute. Information that is exempt from disclosure shall be masked, deleted or otherwise segregated in order that the nonexempt portion of a requested record may be released, and keyed by footnote or other clear reference to the appropriate justification for withholding required by section 67.27 of this article. This work shall be done personally by the attorney or other staff member conducting the exemption review. The work of responding to a public-records request and preparing documents for disclosure shall be considered part of the regular work duties of any city employee, and no fee shall be charged to the requester to cover the personnel costs of responding to a records request. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.27. Justification Of Withholding.

Any withholding of information shall be justified, in writing, as follows:

- (a) A withholding under a specific permissive exemption in the California Public Records Act, or elsewhere, which permissive exemption is not forbidden to be asserted by this ordinance, shall cite that authority.
- (b) A withholding on the basis that disclosure is prohibited by law shall cite the specific statutory authority in the Public Records Act or elsewhere.
- (c) A withholding on the basis that disclosure would incur civil or criminal liability shall cite any specific statutory or case law, or any other public agency"s litigation experience, supporting that position.
- (d) When a record being requested contains information, most of which is exempt from disclosure under the California Public Records Act and this Article, the custodian shall inform the requester of the nature and extent of the nonexempt information and suggest alternative sources for the information requested, if available. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.28. Fees For Duplication.

- (a) No fee shall be charged for making public records available for review.
- (b) For documents routinely produced in multiple copies for distribution, e.g. meeting agendas and related materials, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed one cent per page may be charged, plus any postage costs.
- (c) For documents assembled and copied to the order of the requester, unless a special fee has been established pursuant to subdivision (d) of this section, a fee not to exceed 10 cents per page may be charged, plus any postage.

- (d) A department may establish and charge a higher fee than the one cent presumptive fee in subdivision (b) and the 10 cent presumptive fee in subdivision (c) if it prepares and posts an itemized cost analysis establishing that its cost per page impression exceeds 10 cents or one cent, as the case may be. The cost per page impression shall include the following costs: one sheet of paper; one duplication cycle of the copying machine in terms of toner and other specifically identified operation or maintenance factors, excluding electrical power. Any such cost analysis shall identify the manufacturer, model, vendor and maintenance contractor, if any, of the copying machine or machines referred to.
- (e) Video copies of video recorded meetings shall be provided to the public upon request for \$10.00 or less per meeting. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67.29. Index To Records.

The City and County shall prepare a public records index that identifies the types of information and documents maintained by City and County departments, agencies, boards, commissions, and elected officers. The index shall be for the use of City officials, staff and the general public, and shall be organized to permit a general understanding of the types of information maintained, by which officials and departments, for which purposes and for what periods of retention, and under what manner of organization for accessing, e.g. by reference to a name, a date, a proceeding or project, or some other referencing system. The index need not be in such detail as to identify files or records concerning a specific person, transaction or other event, but shall clearly indicate where and how records of that type are kept. Any such master index shall be reviewed by appropriate staff for accuracy and presented for formal adoption to the administrative official or policy body responsible for the indexed records. The City Administrator shall be responsible for the preparation of this records index. The City Administrator shall report on the progress of the index to the Sunshine Ordinance Task Force on at least a semi-annual basis until the index is completed. Each department, agency, commission and public official shall cooperate with the City Administrator to identify the types of records it maintains, including those documents created by the entity and those documents received in the ordinary course of business and the types of requests that are regularly received. Each department, agency, commission and public official is encouraged to solicit and encourage public participation to develop a meaningful records index. The index shall clearly and meaningfully describe, with as much specificity as practicable, the individual types of records that are prepared or maintained by each department, agency, commission or public official of the City and County. The index shall be sufficient to aid the public in making an inquiry or a request to inspect. Any changes in the department, agency, commission or public official"s practices or procedures affecting the accuracy of the information provided to the City Administrator shall be recorded by the City Administrator on a periodic basis so as to maintain the integrity and accuracy of the index. The index shall be continuously maintained on the City"s World Wide Website and made available at public libraries within the City and County of San Francisco. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.29-1. Records Survive Transition Of Officials.

All documents prepared, received, or maintained by the Office of the Mayor, by any elected city and county official, and by the head of any City or County Department are the property of the City and County of San Francisco. The originals of these documents shall be maintained consistent with the records retention policies of the City and County of San Francisco. (Added by Proposition G, 11/2/99)

Sec. 67.29-2. Internet Access/World Wide Web Minimum Standards.

Each department of the City and County of San Francisco shall maintain on a World Wide Web site, or on a comparable, readily accessible location on the Internet, information that it is required to make publicly available. Each department is encouraged to make publicly available through its World Wide Web site, as much information and as many documents as possible concerning its activities. At a minimum, within six months after enactment of this provision, each department shall post on its World Wide Web site all meeting notices required under this ordinance, agendas and the minutes of all previous meetings of its policy bodies for the last three years. Notices and agendas shall be posted no later than the time that the department otherwise distributes this information to the public, allowing reasonable time for posting. Minutes of meetings shall be posted as soon as possible, but in any event within 48 hours after they have been approved. Each department shall make reasonable efforts to ensure that its World Wide Web site is regularly reviewed for timeliness and updated on at least a weekly basis. The City and County shall also make available on its World Wide Web site, or on a comparable, readily accessible location on the Internet, a current copy of the City Charter and all City Codes. (Added by Proposition G, 11/2/99)

SEC. 67.29-3.

Any future agreements between the city and an advertising space provider shall be public records and shall include as a basis for the termination of the contract any action by, or permitted by, the space provider to remove or deface or otherwise interfere with an advertisement without first notifying the advertiser and the city and obtaining the advertiser's consent. In the event advertisements are defaced or vandalized, the space provider shall provide written notice to the city and the advertiser and shall allow the advertiser the option of replacing the defaced or vandalized material. Any request by any city official or by any space provider to remove or alter any advertising must be in writing and shall be a public record. (Added by Proposition G, 11/2/99)

Sec. 67.29-4. Lobbyist On Behalf Of The City.

(a) Any lobbyist who contracts for economic consideration with the City and County of San Francisco to represent the City and County in matters before any local, regional, state, or federal administrative or legislative body shall file a public records report of their activities on a quarterly basis with the San Francisco Ethics Commission. This report shall be maintained by the Ethics Commission and not be exempt from disclosure. Each quarterly report shall identify all financial expenditures by the lobbyist, the individual or entity to whom each expenditure was made, the date the expenditure was made, and specifically identify the local, state, regional or national legislative or administrative action the lobbyist supported or opposed in making the expenditure. The failure to file a quarterly report with the required disclosures shall be a violation of this

#### Ordinance.

- (b) No person shall be deemed a lobbyist under section (a), unless that person receives or becomes entitled to receive at least \$300 total compensation in any month for influencing legislative or administrative action on behalf of the City and County of San Francisco or has at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. No business or organization shall be deemed as a lobbyist under section (a) unless it compensates its employees or members for their lobbying activities on behalf of the City and County of San Francisco, and the compensated employees or members have at least 25 separate contacts with local, state, regional or national officials for the purpose of influencing legislative or administrative action within any two consecutive months. "Total compensation" shall be calculated by combining all compensation received from the City and County of San Francisco during the month for lobbying activities on matters at the local, state, regional or national level. "Total number of contacts" shall be calculated by combining all contacts made during the two-month period on behalf of the City and County of San Francisco for all lobbying activities on matters at the local, state, regional or national level.
- (c) Funds of the City and County of San Francisco, including organizational dues, shall not be used to support any lobbying efforts to restrict public access to records, information, or meetings, except where such effort is solely for the purpose of protecting the identity and privacy rights of private citizens. (Added by Proposition G, 11/2/99)

Sec. 67.29-5. Calendars Of Certain Officials.

The Mayor, The City Attorney, and every Department Head shall keep or cause to be kept a daily calendar wherein is recorded the time and place of each meeting or event attended by that official, with the exclusion of purely personal or social events at which no city business is discussed and that do not take place at City Offices or at the offices or residences of people who do substantial business with or are otherwise substantially financially affected by actions of the city. For meetings not otherwise publicly recorded, the calendar shall include a general statement of issues discussed. Such calendars shall be public records and shall be available to any requester three business days subsequent to the calendar entry date. (Added by Proposition G, 11/2/99)

Sec. 67.29-6. Sources Of Outside Funding.

No official or employee or agent of the city shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed as a public record and made available on the website for the department to which the funds are directed. When such funds are provided or managed by an entity, and not an individual, that entity must agree in writing to abide by this ordinance. The disclosure shall include the names of all individuals or organizations contributing such money and a statement as to any financial interest the contributor has involving the City. (Added by Proposition G, 11/2/99)

Sec. 67.29-7. Correspondence And Records Shall Be Maintained.

- (a) The Mayor and all Department Heads shall maintain and preserve in a professional and businesslike manner all documents and correspondence, including but not limited to letters, e-mails, drafts, memorandum, invoices, reports and proposals and shall disclose all such records in accordance with this ordinance.
- (b) The Department of Elections shall keep and preserve all records and invoices relating to the design and printing of ballots and other election materials and shall keep and preserve records documenting who had custody of ballots from the time ballots are cast until ballots are received and certified by the Department of Elections.
- (c) In any contract, agreement or permit between the City and any outside entity that authorizes that entity to demand any funds or fees from citizens, the City shall ensure that accurate records of each transaction are maintained in a professional and businesslike manner and are available to the public as public records under the provisions of this ordinance. Failure of an entity to comply with these provisions shall be grounds for terminating the contract or for imposing a financial penalty equal to one-half of the fees derived under the agreement or permit during the period of time when the failure was in effect. Failure of any Department Head under this provision shall be a violation of this ordinance. This paragraph shall apply to any agreement allowing an entity to tow or impound vehicles in the City and shall apply to any agreement allowing an entity to collect any fee from any persons in any pretrial diversion program. (Added by Proposition G, 11/2/99)

Sec. 67.30. The Sunshine Ordinance Task Force.

(a) There is hereby established a task force to be known as the Sunshine Ordinance Task Force consisting of eleven voting members appointed by the Board of Supervisors. All members must have experience and/or demonstrated interest in the issues of citizen access and participation in local government. Two members shall be appointed from individuals whose names have been submitted by the local chapter of the Society of Professional Journalists, one of whom shall be an attorney and one of whom shall be a local journalist. One member shall be appointed from the press or electronic media. One member shall be appointed from individuals whose names have been submitted by the local chapter of the League of Women Voters. Four members shall be members of the public who have demonstrated interest in or have experience in the issues of citizen access and participation in local government. Two members shall be members of the public experienced in consumer advocacy. One member shall be a journalist from a racial/ethnic-minority-owned news organization and shall be appointed from individuals whose names have been submitted by New California Media. At all times the task force shall include at least one member who shall be a member of the public who is physically handicapped and who has demonstrated interest in citizen access and participation in local government. The Mayor or his or her designee, and the Clerk of the Board of Supervisors or his or her designee, shall serve as non-voting members of the task force. The City Attorney shall serve as legal advisor to the task force. The Sunshine Ordinance Task Force shall, at its request, have assigned to in an attorney from within the City Attorney's Office or other appropriate City Office, who is experienced in public-access law matters. This attorney shall serve solely as a

legal advisor and advocate to the Task Force and an ethical wall will be maintained between the work of this attorney on behalf of the Task Force and any person or Office that the Task Force determines may have a conflict of interest with regard to the matters being handled by the attorney.

- (b) The term of each appointive member shall be two years unless earlier removed by the Board of Supervisors. In the event of such removal or in the event a vacancy otherwise occurs during the term of office of any appointive member, a successor shall be appointed for the unexpired term of the office vacated in a manner similar to that described herein for the initial members. The task force shall elect a chair from among its appointive members. The term of office as chair shall be one year. Members of the task force shall serve without compensation.
- (c) The task force shall advise the Board of Supervisors and provide information to other City departments on appropriate ways in which to implement this chapter. The task force shall develop appropriate goals to ensure practical and timely implementation of this chapter. The task force shall propose to the Board of Supervisors amendments to this chapter. The task force shall report to the Board of Supervisors at least once annually on any practical or policy problems encountered in the administration of this chapter. The Task Force shall receive and review the annual report of the Supervisor of Public Records and may request additional reports or information as it deems necessary. 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. The Task Force shall, from time to time as it sees fit, issue public reports evaluating compliance with this ordinance and related California laws by the City or any Department, Office, or Official thereof.
- (d) In addition to the powers specified above, the Task Force shall possess such powers as the Board of Supervisors may confer upon it by ordinance or as the People of San Francisco shall confer upon it by initiative.
- (e) The Task Force Commission shall approve by-laws specifying a general schedule for meetings, requirements for attendance by Task Force members, and procedures and criteria for removing members for non-attendance. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 118-94, App. 3/18/94; Ord. 432-94, App. 12/30/94; Ord. 287-96, App. 7/12/96; Ord. 198-98, App. 6/19/98; 387-98, App. 12/24/98; Proposition G, 11/2/99)

Sec. 67.31. Responsibility For Administration.

The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under his or her control. The Mayor shall administer and coordinate the implementation of the provisions of this chapter for departments under the control of board and commissions appointed by the Mayor. Elected officers shall administer and coordinate the implementation of the provisions of this chapter for departments under their respective control. The Clerk of the Board of Supervisors shall provide a full-time staff person to perform administrative duties for the Sunshine Ordinance Task Force and to assist any person in gaining access to public meetings or public information. The Clerk of the Board of Supervisors shall provide that staff person with whatever facilities and equipment are necessary to perform said duties. (Added by Ord. 265-93, App. 8/18/93; amended by Ord. 287-96, App. 7/12/96; Proposition G, 11/2/99)

Sec. 67.32. Provision Of Services To Other Agencies; Sunshine Required.

It is the policy of the City and County of San Francisco to ensure opportunities for informed civic participation embodied in this Ordinance to all local, state, regional and federal agencies and institutions with which it maintains continuing legal and political relationships. Officers, agents and other representatives of the City shall continually, consistently and assertively work to seek commitments to enact open meetings, public information and citizen comment policies by these agencies and institutions, including but not limited to the Presidio Trust, the San Francisco Unified School District, the San Francisco Community College District, the San Francisco Transportation Authority, the San Francisco Housing Authority, the Treasure Island Development Authority, the San Francisco Redevelopment Authority and the University of California. To the extent not expressly prohibited by law, copies of all written communications with the above identified entities and any City employee, officer, agents, or and representative, shall be accessible as public records. To the extent not expressly prohibited by law, any meeting of the governing body of any such agency and institution at which City officers, agents or representatives are present in their official capacities shall be open to the public, and this provision cannot be waived by any City officer, agent or representative. The city shall give no subsidy in money, tax abatements, land, or services to any private entity unless that private entity agrees in writing to provide the city with financial projections (including profit and loss figures), and annual audited financial statements for the project thereafter, for the project upon which the subsidy is based and all such projections and financial statements shall be public records that must be disclosed. (Added by Proposition G, 11/2/99)

Sec. 67.33. Department Head Declaration.

All City department heads and all City management employees and all employees or officials who are required to sign an affidavit of financial interest with the Ethics Commission shall sign an annual affidavit or declaration stating under penalty of perjury that they have read the Sunshine Ordinance and have attended or will attend when next offered, a training session on the Sunshine Ordinance, to be held at least once annually. The affidavit or declarations shall be maintained by the Ethics Commission and shall be available as a public record. Annual training shall be provided by the San Francisco City Attorney's Office with the assistance of the Sunshine Ordinance Task Force. (Added by Proposition G, 11/2/99)

Sec. 67.34. Willful Failure Shall Be Official Misconduct.

The willful failure of any elected official, department head, or other managerial city employee to discharge any duties imposed by the Sunshine Ordinance, the Brown Act or the Public Records Act shall be deemed official misconduct. Complaints involving allegations of willful violations of this ordinance, the Brown Act or the Public Records Act by elected officials or department heads of the City and County of San Francisco shall be handled by the Ethics Commission. (Added by Proposition G, 11/2/99)

Sec. 67.35. Enforcement Provisions.

- (a) Any person may institute proceedings for injunctive relief, declaratory relief, or writ of mandate in any court of competent jurisdiction to enforce his or her right to inspect or to receive a copy of any public record or class of public records under this Ordinance or to enforce his or her right to attend any meeting required under this Ordinance to be open, or to compel such meeting to be open.
- (b) A court shall award costs and reasonable attorneys" fees to the plaintiff who is the prevailing party in an action brought to enforce this Ordinance.
- (c) If a court finds that an action filed pursuant to this section is frivolous, the City and County may assert its rights to be paid its reasonable attorneys" fees and costs.
- (d) Any person may institute proceedings for enforcement and penalties under this act in any court of competent jurisdiction or before the Ethics Commission if enforcement action is not taken by a city or state official 40 days after a complaint is filed. (Added by Proposition G, 11/2/99)

Sec. 67.36. Sunshine Ordinance Supersedes Other Local Laws.

The provisions of this Sunshine Ordinance supersede other local laws. Whenever a conflict in local law is identified, the requirement which would result in greater or more expedited public access to public information shall apply. (Added by Proposition G, 11/2/99)

Sec. 67.37. Severability.

The provisions of this chapter are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this chapter, or the invalidity of the application thereof to any person or circumstances, shall not affect the validity of the remainder of this chapter, or the validity of its application to other persons or circumstances. (Added by Ord. 265-93, App. 8/18/93; amended by Proposition G, 11/2/99)

Sec. 67a.1. Prohibiting The Use Of Cell Phones, Pagers And Similar Sound-Producing Electrical Devices At And During Public Meetings.

At and during a public meeting of any policy body governed by the San Francisco Sunshine Ordinance, the ringing and use of cell phones, pagers and similar sound-producing electronic devices shall be prohibited. The presiding officer of any public meeting which is disrupted may order the removel 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. The presiding officer may allow an expelled person to return to the public meeting following an agreement by the expelled person to comply with the provisions of this Section. A warning of the provisions of this Section shall be printed on all meeting agendas, and shall be explained at the beginning of each public meeting by the presiding officer. (Added by Ord. 286-00, File No. 001155. App. 12/22/2000)