Date: October 27, 2009

Item No. 13 & 14
File No. 09058

SUNSHINE ORDINANCE TASK FORCE

AGENDA PACKET CONTENTS LIST*

☒	**Anmarie Mabbutt against Clerk of the Board of Supervisors**
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Completed by: Chris Rustom **Date:** Oct. 21, 2009

***This list reflects the explanatory documents provided**

~ Late Agenda Items (documents received too late for distribution to the Task Force Members)

** The document this form replaces exceeds 25 pages and will therefore not be copied for the packet. The original document is in the file kept by the Administrator, and may be viewed in its entirety by the Task Force, or any member of the public upon request at City Hall, Room 244.

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CITY AND COUNTY OF SAN FRANCISCO

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City Attorney

OFFICE OF THE CITY ATTORNEY

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MEMORANDUM

October 27, 2009:

ANNMARIE MABBUT v. CLERK OF THE BOARD OF SUPERVISORS (09058)

COMPLAINT

THE COMPLAINANT ALLEGES THE FOLLOWING:

Complainant Annmarie Mabbutt alleges that the Clerk of the Board of Supervisors (the "Clerk") failed to provide a legally adequate description of legislative items related to Ordinance #090717 (actually, Board File #090717, Ordinance #0164-09) when they appeared on agendas and minutes related of the Board of Supervisors and the Board's Budget and Finance. The deficiency alleged is that the descriptions were neither clear nor accurate and thus violated the requirements of the Sunshine Ordinance and possibly other public meeting and records laws.

COMPLAINANT FILES COMPLAINT:

On 9/10/2009, Ms. Mabbutt filed a Complaint against the Clerk for her alleged violations of Sections 67.7(a) & (b), and 67.7-1of the Sunshine Ordinance, as well as other possible public meeting and records law provisions.

JURISDICTION

The Clerk is a City department under the San Francisco City Charter and thus the Task Force has jurisdiction over this issue.

APPLICABLE STATUTORY SECTION(S):

Section 67 of the San Francisco Administrative Code:

Section 67.7(a) & (b) deal with descriptions of agenda items for a public meeting.

Section 67.7-1 deals with the notice to be provided by City agencies to residents regarding any activity that may affect their property or the neighborhood.

Sections 54050 et seq. of the Cal. Government Code (the "Brown Act")

Section 54954.2 deals with posting of agendas and description of items in those agendas.

MEMORANDUM

APPLICABLE CASE LAW:

- *Phillips v. Seely* (1974) 43 Cal.App.3d 104, 120 ("where the subject matter to be considered is sufficiently defined to apprise the public of the matter to be considered and notice has been given in the manner required by law, the governing body is not required to give further special notice.").

- *Carlson v. Paradise Unified Sch. Dist.* (1971) 18 Cal.App.3d 196, 200 ("it is imperative that the agenda of the board's business be made public and in some detail so that the general public can ascertain the nature of such business.").

- The California Attorney General has concluded that, under Government Code § 54954.2, the agenda must include a sufficient description "to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body." See The Brown Act: Open meetings for Local Legislative Bodies.

ISSUES TO BE DETERMINED

1. FACTUAL ISSUES

A. Uncontested Facts: The Board of Supervisors considered the legislative item referred to as File #090717 during the year 2009 and eventually enacted it as Ordinance #0164-09. The committee and full board meetings where File #090717 was considered were publicized via an agenda that included a description of that item.

The short title of the proposed ordinance was "Recreation and Park Department – Athletic Field Fees." The longer title was "Ordinance amending San Francisco Park Code, Article 12, by amending Section 12.36 to increase the fees for use Athletic Fields and making environmental findings."

B. Contested facts/ Facts in dispute:

It is unclear how the legislative items in question were described in the agendas or minutes of the Board of Supervisors and it committees, as complainant had not provided those descriptions with her complaint, nor had the Clerk responded, as the time of this memo.

Ms. Mabbutt alleges that the agenda item descriptions for File #08056 were legally deficient in that they were neither clear nor accurate. She further alleges that the description on the face of the proposed ordinance was likewise legally deficient in that it was neither clear nor accurate. It appears from Ms. Mabbutt's citation of §67.7-1 that she believes the item may have required notice to residents of a specific area affected by the proposed ordinance, but this is not entirely clear from her complaint.

MEMORANDUM

QUESTIONS THAT MAY ASSIST IN DETERMINING FACTS:

- What was the exact description of the item when it was on the meeting agendas of the Budget Committee and full Board of Supervisors for consideration?
- Was notice of the proposed legislation mailed to residents of any specific geographic area that may have been affected by its passage?

LEGAL ISSUES/LEGAL DETERMINATIONS:

- Were sections of the Sunshine Ordinance, Brown Act, and/or California Constitution Article I, Section three violated?

SUGGESTED ANALYSIS

Under Section 67.7(a) of the Ordinance:

- Was the agenda description of the legislative item in question a "meaningful description"?

Under Section 67.7(b) of the Ordinance:

- Was the agenda description of the legislative item in question "sufficiently 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"?
- Was the agenda description of the legislative item in question "brief, concise and written in plain, easily understood English"?

Under Section 67.7-1 of the Ordinance:

- If notice of the legislative item was mailed to residents of a specific area, was the notice "brief, concise and written in plain, easily understood English"?

Under Section 54954.2 of the Brown Act:

- Was the agenda description of the legislative item in question a "brief general description"?
- Was the agenda description sufficient "to apprise the public of the matter to be considered"?

MEMORANDUM

CONCLUSION

THE TASK FORCE FINDS THE FOLLOWING FACTS TO BE TRUE:

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

ATTACHED STATUTORY SECTION FROM CHAPTER 67 OF THE SAN FRANCISCO ADMINISTRATIVE CODE UNLESS OTHERWISE SPECIFIED

Section 67.7 (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."

Section 67.7 (b): "A description is meaningful if it is sufficiently 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."

Section 67.7-1(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.

SECTIONS 54950.ET SEQ. OF THE CAL. GOVERNMENT CODE

Section 54954.2(a) provides, in pertinent part:
"At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session. A brief general description of an item generally need not exceed 20 words."

MEMORANDUM

THE CALIFORNIA CONSTITUTION AS AMENDED BY PROPOSITION 59 IN 2004 PROVIDES FOR OPENNESS IN GOVERNMENT.

Article I Section 3 provides:

> a) The people have the right to instruct their representative, petition government for redress of grievances, and assemble freely to consult for the common good.
>
> b)(1) The people have the right of access to information concerning the conduct of the people's business, and therefore, the meetings of public bodies and the writings of public officials and agencies shall be open to public scrutiny.
>
> 2) A statute, court rule, or other authority, including those in effect on the effective date of this subdivision that limits the right of access shall be adopted with findings demonstrating the interest protect by the limitation and the need for protecting that interest.
>
> 3) Nothing in this subdivision supersedes or modifies the right of privacy guaranteed by Section 1 or affects the construction of any statute, court rule, or other authority to the extent that it protects that right to privacy, including any statutory procedures governing discovery or disclosure of information concerning the official performance or professional qualifications of a peace officer.
>
> 4) Nothing in this subdivision supersedes or modifies any provision of this Constitution, including the guarantees that person may not be deprived of life, liberty, or property without due process of law, or denied equal protection of the laws, as provided by Section 7.
>
> 5) This subdivision does not repeal or nullify, expressly or by implication, any constitutional or statutory exception to the right of access to public records or meetings or public bodies that is in effect on the effective date of this subdivision, including, but not limited to, any statute protecting the confidentiality of law enforcement and prosecution records.
>
> 6) Nothing in this subdivision repeals, nullifies, supersedes, or modifies protections for the confidentiality of proceedings and records of the Legislature, the Members of the Legislature, and its employees, committee, and caucuses provided by Section 7 of Article IV, state law, or legislative rules adopted in furtherance of those provisions: nor does it affect the scope of permitted discovery in judicial or administrative proceedings regarding deliberations of the Legislature, the Members of the Legislature, and its employees, committees, and caucuses.

<complaints@sfgov.org>
09/11/2009 03:14 PM

To <sotf@sfgov.org>
cc
bcc
Subject Sunshine Complaint

Submitted on: 9/11/2009 3:14:37 PM

Department: Office of the Clerk of the Board of Supervisors

Contacted:

Public_Records_Violation: Yes

Public_Meeting_Violation: No

Meeting_Date:

Section(s)_Violated: 67.7(a), 67.7(b) and 67.7-1

Description: Ordinance #090717 was approved by a full Board of Supervisors on July 7th, 2009 and was signed into law by Mayor Newsom a week later. This Ordinance on its face, as well as all Agenda Item descriptions of it that are contained in the Agendas and minutes for both the Budget & Finance Committee and full Board of Supervisors meetings are neither clear nor accurate and are clearly in violation of various sections of the Sunshine Ordinance and possibly other public record and disclosure laws especially as they relate to the introduction, presentation, passing and description of legislation.

Hearing: Yes

Pre-Hearing: No

Date: 09/11/2009

Name: Anmarie Mabbutt

Address:

City:

Zip:

Phone:

Email:

Anonymous:

Confidentiality_Requested: Yes

Anmarie Mabbutt
<[redacted]@yahoo.com>
09/10/2009 11:04 AM

To SOTF@sfgov.org
cc
bcc
Subject FILING OF SUNSHINE ORDINANCE COMPLAINT AGAINST THE OFFICE OF THE CLERK OF THE BOARD OF SUPERVISORS

History: This message has been replied to.

Dear SOTF,

Please consider this writing as formal notice of a complaint against the Office of the Clerk of the Board of Supervisors for numerous violations of the Sunshine Ordinance including but not necessarily limited to Sections 67.7(a), 67.7(b) and 67.7-1 regarding the short title descriptions and Agenda Item descriptions including Agenda Item descriptions for any and all Budget & Finance Committee and full Board of Supervisors meetings regarding Ordinance #090717.

Ordinance #090717 was approved by a full Board of Supervisors on July 7th, 2009 and was signed into law by Mayor Newsom a week later. This Ordinance on its face, as well as all Agenda Item descriptions of it that are contained in the Agendas and minutes for both the Budget & Finance Committee and full Board of Supervisors meetings are neither clear nor accurate and are clearly in violation of various sections of the Sunshine Ordinance and possibly other public record and disclosure laws especially as they relate to the introduction, presentation, passing and description of legislation.

If you could please confirm receipt of this complaint and let me know if there is any additional information that you require.

Sincerely,

Anmarie Mabbutt

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