



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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July 29, 2014

The Honorable Presiding Judge Cynthia Ming-mei Lee
400 McAllister Street, Department 206
San Francisco, CA 94102

Re: Civil Grand Jury Report: Ethics in the City

Dear Judge Lee:

The Ethics Commission recognizes the sincere efforts of the 2013-14 Civil Grand Jury and the amount of work put into their report, which covers a broad range of issues. The Commission also appreciates that the Civil Grand Jury has made a number of positive and helpful suggestions for improvement in the regulation and enforcement of the City's campaign and conflict-of-interest laws.

The Commission also feels compelled to note an unfortunate incongruity in the report as a whole. The report takes the Commission to task for not conducting a much broader net of auditing activities, not providing more and extended searchable electronic databases, not conducting greater oversight of lobbyists and other political professionals, not conducting more policy discussions, and not having a sufficiently large enforcement structure. It is true that this – or any such body – could do more. However, the report nearly fails to acknowledge that this desired body of work cannot be conducted without a large influx of additional staff and resources. This suggested lack of production is not due to poor use of current resources; the Ethics Commissioners and staff are very productive, well-managed and highly regarded throughout the country. Yet in stating that the Commission must do far more with what is already has, the Civil Grand Jury then goes on to suggest a host of new responsibilities that would require even greater amounts of resources that it is simply unreasonable to expect will be made available. The report also states that other investigative bodies have more resources than the Ethics Commission does in a fashion that suggests that this is a shortcoming to be laid at the feet of the Commission.

In summary, the Commission is grateful for those suggestions that will help improve the Commission's mission, particularly those than can be implemented with a reasonable strain on resources. It will further endeavor to implement other useful recommendations in the future as more resources become available. It also recognizes that, while well-intentioned, other recommendations would not be as fruitful as the Civil Grand Jury predicts, and therefore will not be implemented. The attached list provides the required responses from the Ethics Commission and its Executive Director.

Sincerely,

Cc: Board of Supervisors

Ethics in the City: Promise Practice or Pretense

Response to Findings and Recommendations California Penal Code, section 933.05

Finding 1a: The Ethics Commission lacks resources to handle major enforcement cases. These include, for example, cases alleging misconduct, conflict of interest, violating campaign finance and lobbying laws, and violating post-employment restrictions.

Finding 1b: The Ethics Commission has only two investigators.

Finding 1c: The confidentiality required of Ethics Commission investigations runs counter to the Commission's other duties to make information more public and to increase the transparency of government.

Finding 1d: The District Attorney, City Attorney and the Fair Political Practices Commission have more substantial investigative staffs and larger budgets.

Finding 1e: The Fair Political Practices Commission has been very active in bringing enforcement actions, and handles enforcement for some local units of California government.

Finding 1f: Enforcement is best handled outside of the environment of political partisanship and preferences.

Recommendation 1: The Jury recommends a contract with the Fair Political Practices Commission for at least a two-year pilot basis to enforce both state and related San Francisco law violations.

Findings 1a: Disagree. The Grand Jury cited no instance where there were alleged charges of misconduct, conflict of interest, etc. where the Ethics Commission failed to act due to a lack of resources. While the Ethics Commission, like many agencies, does not have the full resources it could use in carrying out its mission, it is productive in resolving its enforcement cases.

Finding 1b: Agree. The Ethics Commission currently has two investigators; a third position exists but remains vacant because it is unfunded.

Finding 1c: Disagree. There is nothing inconsistent with the confidentiality requirements relating to enforcement actions and the Ethics Commission's role in making information public and promoting transparency of government. The confidentiality of investigations is required by the Charter; it has no impact on the other duties of the Commission not related to investigations/enforcement. The Commission notes that the Civil Grand Jury also operates in complete confidentiality.

Finding 1d: Agree. Other, larger law enforcement entities do have more investigative staffs; they also generally have a larger workload than their resources can easily accommodate.

Finding 1e: Agree, partially. While the FPPC handles enforcement matters for the County of San Bernardino, and otherwise initiates some enforcement actions in local jurisdictions, they generally do not enforce local laws.

Finding 1f: Agree. However, the budget process is the primary attachment of the Ethics Commission to the City; the Commission has not experienced undue influence as a result of this relationship.

Recommendation 1: Will not be implemented. The Ethics Commission sees no need for this and it is possible that the Charter would prohibit such a contract. Currently, the FPPC is not allowed to do this under state law (a pilot program exists between the FPPC and the County of San Bernardino, but this is the only jurisdiction allowed under existing statute).

Finding 2: In some instances, improper campaign contributions were returned to the contributor rather than forfeited to the City as required by City law. The Jury found no record of the Commission acting to waive or reduce the forfeiture.

Recommendation 2: The Board of Supervisors should request an independent audit by the City Attorney to determine whether prohibited contributions were forfeited to the City as required by law.

Finding 2/Recommendation 2: Although not required to respond, the Ethics Commission would like to point out that, in order to make a small allowance for human error, it has been Commission policy since August 2008 that if a committee returns a corporate or excess contribution to the donor prior to any action taken by the Commission, the returned contribution is not subject to forfeiture. This clearly falls under the authority that the Ethics Commission may provide for the waiver or reduction of the forfeiture.

Finding 3: A broader Citizen's Right of Action to enforce ethics laws will provide assurance to the public that the laws will be enforced.

Recommendation 3: The Jury recommends that the Ethics Commission and the Board of Supervisors act to enhance the Citizen's Right of Action to enforce all of the City's ethics laws, with an award of attorney fees and a share of any penalties going to the City for a successful filer, as was provided by Proposition J.

Finding 3: Disagree. There has never been an apparent problem with the provisions for a "citizen's right of action" in current law. To our knowledge, no one has ever attempted to use or even inquired about this right.

Recommendation 3: Will not be implemented. Absent a problem with the status quo, there is no compelling basis for specific enhancements, particularly considering that this would require additional resources.

Finding 4: Some information currently reported and posted is not put into the standard searchable electronic format. The Jury specifically finds that contract approval forms, Form 700 forms, behested payments forms, and Lobbyists on Behalf of the City forms can be converted to a searchable format before they are posted.

Recommendation 4: That contract approval forms be converted to a format which allows searches by the name of the official, by the name of the contractor, the value of contracts and the date the contract was signed. Behested payments information should be filed electronically in a format that allows for searches and data aggregation. Form 700s should be formatted to allow data to be searched on income sources, outside employment, gift sources and travel.

Finding 4: Partially agree. There is some information filed with the Ethics Commission not currently in searchable electronic format.

Recommendation 4: Partially implemented/partially will not be implemented. Converting each type of form into such a format requires expensive development of software platforms. This particular recommendation would be extremely expensive. Over time, the Commission plans to develop such platforms for most if not all of the filings it administers. Lack of funding for development means that the addition of the various forms will be done as resources are made available. It should be noted, for example, that 2014 is the first time ever that all Form 700 financial disclosures filed with the Ethics Commission had to be submitted electronically. This was an important, but technically difficult step. Since there is no specified state electronic schema for these forms, creating a searchable database would be risky as it might not conform to state standards when they are eventually promulgated. But it is a desirable goal and will be accomplished eventually. Absent the proper software, data would have to be entered manually. This is unrealistic as the cost would be higher in terms of staff time and attendant issues would arise such as transfer error.

The Director also notes that the Commission has already made great progress in moving its many filings into electronic databases, and there should be no doubt that this will continue. San Francisco is ahead of the majority of jurisdictions in this area. For example, The New York Times recently noted that the Federal Election Commission takes weeks and in some cases more than a month to process campaign finance filings of federal candidates, whereas in San Francisco this information is processed in a matter of minutes.

Note: this recommendation includes Behested Payment Forms, which are not filed with the Ethics Commission.

Finding 5: Required filings are treated independently and cannot easily be cross searched electronically using common data reference fields like name and organization to access and aggregate information types, such as dollar amounts, that cross between filings.

Recommendation 5: The Ethics Commission work to develop a common format database for data posted to DataSF, initially aiming to combine campaign, lobbying and Form 700 data.

Finding 5: Disagree partially. This assertion is not completely true. The Commission compiles all campaign and lobbyist filings on DataSF so that the information may be searched and aggregated. In fact, the Commission uses the campaign and lobbyist data on DataSF to aggregate and visualize the data on the Commission's web dashboards.

A recent report by the Mayor's Office describes "how the San Francisco Ethics Commission uses DataSF to increase transparency by summarizing and creating visualizations related to ethics data and reports." Further, the report states "Our top referrer is the Ethics Commission, see Figure 12, which has made extensive use of DataSF not only as a publishing platform but as a means to create dashboards and visualizations on its own site. See Figure 13 on the next page for a screenshot showing how the Ethics Commission creates visualizations using the DataSF platform and then embeds the visualizations into a web page. This makes them the top embedders, i.e. the top data visualizations that have been viewed within an external website."

Further, according to "Governing" magazine, the U.S. Open Data Census in March of this year rated San Francisco as the "best city for open data" in the country. The study involved gives both our lobbyist reporting system and our campaign finance system perfect scores.

Recommendation 5: Partially implemented/partially awaiting state action. The Commission and the Director note that the campaign and lobbyist data are already available in a common database format on DataSF. Form 700 data is not on DataSF because a state data schema has yet to be defined by the Fair Political Practices Commission.

Finding 6a: City officials, both those in elective office and political appointees, may create separate committees to raise funds and campaign for political party office such as the Party Central Committees, as well as separate committees to raise funds and campaign for ballot measures or to contribute to other candidate. There are no limits on contributions to these committees.

Finding 6b: If candidates seek election to local political party committees during the same election cycle while also seeking election to an official City position, including supervisor, candidate committee rules do not apply. Thus while being limited to a \$500 cap in a City contest

(or even an outright prohibition on contributions), donors may contribute additional funds through the back door of a political party contest.

Finding 6c: The rise of major donors, and the potential for further influence following the recent U.S. Supreme Court decisions may well influence elections far beyond what political party affiliation has historically done.

Finding 6d: Corporations may not contribute directly to a candidate for City office but may instead contribute to a business association that contributes to a candidate, or to a nonprofit that spends on behalf of a candidate, or to another committee controlled by the candidate or officeholder, or through an independent expenditure committee.

Finding 6e: Corporate money is being funneled into local campaigns through a web of nonprofit organizations. The Jury cannot determine whether the main effect is to hide the true source of contributions or if this shields illegal contributions from disclosure. The Ethics Commission has not discussed a disclosure strategy to make this information public.

Recommendation 6a: The Commission should proactively look at ways to track back 501(c) (3) & (4) money to real donors before the start of campaigns where this kind of money will be important; its true source should be identified.

Recommendation 6b: The Commission should propose ordinance amendments to require disclaimers in mailings, ads, door hangers and other voter outreach materials funded by committees whose individual donors are not identified to the satisfaction of a reasonable person which states, "this is paid for by (insert organization name) funded by anonymous donors in this campaign cycle."

Findings 6a – 6b: There is no disagreement with these statements.

Finding 6c: Agree. However there is no evidence provided in the report that proves this to be true locally (the trend in San Francisco in recent years has been a reduction in the number of Major Donors).

Finding 6d: Agree.

Finding 6e: Not enough information is provided in the report to agree.

Recommendation 6a: Newly implemented. Effective July 1, 2014, a new state law requires "Multipurpose Organizations," including nonprofits and federal and out-of-state PACs spending on state and local elections to report as political committees and disclose those donors who are the sources of funds used for political purposes. However, absent qualifying as a campaign committee under state law, nonprofit organizations appear to be generally entitled to keep their donors confidential. (Ref. 26 USC 6103/6104/7431; NAACP vs. Alabama, 357 US 449 [1958]).

Recommendation 6b: The Ethics Commission require further analysis of this recommendation and will include a discussion of the merits as part of its upcoming consideration of a package of proposals for changes in the Campaign Finance Reform Ordinance (CFRO) anticipated later this year.

Finding 7: The Ethics Commission provides written information only in English although San Francisco has strong political participation from communities and officials whose first language is not English and who require guides and educational materials relevant to their needs.

Recommendation 7: The Ethics Commission should make guides and educational materials available in the major languages as is done in other City Departments.

Finding 7: Agree. This is correct for the time being.

Recommendation 7: Will not be implemented for now. The Director notes that, using City-required formulas, the Commission has determined that the demand for such services is zero percent. While we are capable of accommodating any individual with such demands if such occurred, it would not be a good use of financial and other resources to provide an unwanted service.

Finding 8: The current definition of “lobbyist” and “contacts” does not provide the public with sufficient information to understand how City Hall decisions are influenced despite the intent of the law.

Recommendation 8: The lobbyist ordinance should be reviewed and amended to provide clearer public disclosure of contacts with City officials regarding the interests of clients, and who should be required to register and make disclosures.

Finding 8: Partially agree. The ordinance was recently amended and updated at the Board of Supervisors (changes not in effect at time Finding was written).

Recommendation 8: Currently under implementation. The new definitions and provisions have been drafted into regulations by the Ethics Commission staff and will be reviewed by the Commission at its regular July 2014 meeting. These new provisions and regulations should be in effect by the end of the calendar year.

Finding 9: The effort to influence City Hall decisions is not limited to contacts with City officials but also includes outreach to community, political and nonprofit organizations as well as to the general public through television ads, mailers, robocalls, polling, and other strategies. In 2010 the Ethics Commission proposal was approved by the Board to eliminate reporting on these expenditures.

Recommendation 9: The requirement for disclosure of all expenditures aimed at influencing City Hall decisions should be reinstated in the law with full public disclosure.

Finding 9: Agree. Under the change, which was part of a successful simplification of the lobbyist registration process, Expenditure Lobbyists would still have to register paid lobbyists, but the expenditures made to influence public opinion were no longer captured when the changes went into effect. Prior to the change, only five organizations had ever reported expenditure lobbying: In 2007, the California Urban Issues Project reported expenditures of \$46,400 and the Small Property Owners of SF reported spending \$1,000. In 2009, the California Urban Issues Project reported \$1,702, the SF Common Sense Coalition reported \$58,110 and the SF Firefighters Local 798 reported \$367,350. Because the actual number of such reported expenditures were so few, it was not a controversial decision to drop this requirement due to the limited benefit provided; at the time, no public objection was made.

Recommendation 9: Will be implemented should the Board of Supervisors adopt a measure; the Commission will ensure that any such measure is enforced. Within the next 12 months the Ethics Commission will consider re-examining whether or not there is a need to make further changes to the lobbying ordinance to enhance public disclosure of expenditures aimed at influencing City Hall decisions.

Finding 10: People holding themselves out as "strategic advisors" provide advice on ways to influence City decision-making.

Recommendation 10: Work of "strategic advisors" that provide guidance on winning approvals from City officials and/or the public should be reviewed by the Ethics Commission for possible inclusion in the lobbyist registration and/or campaign consultant law.

Finding 10: Unable to agree. This finding is not adequately explained in the report making it difficult to respond.

Recommendation 10: Will not be implemented. Regulating activity that is not lobbying and that is not campaign consulting would appear to be outside of the Ethics Commission's jurisdiction since it would not involve government contacts or campaign activity.

Finding 11: The role of e-mail and text messages in governmental decision-making has not been fully discussed and explored. Rules on preservation of e-mails in public records are very hazy and some departmental officials told the Jury they routinely delete e-mail. Guidance from the City Attorney on preservation of e-mail is non-specific. There is no guidance regarding text messages. There is no policy that applies to private e-mails and text messages that further public decision-making.

Recommendation 11: The Ethics Commission in conjunction with the City Attorney should develop a policy to ensure preservation of e-mails and text messages consistent with preservation of other public records. The policy, along with policies on preservation of public records, should be made available for public comment. Once it is completed and published it should be made available on City Attorney and Ethics Commission web pages that lists each Department, its policy, and how to obtain documents.

Finding 11: Partially agree. The City document retention policy does not require retention of correspondence for any specific period of time; this would include e-mails. Departments are free to create more restrictive rules as they find necessary.

Recommendation 11: Needs further analysis subject to an upcoming Supreme Court ruling. The City's document retention policy does not appear hazy. The Administrative Code requires each department to have its own policy and schedule regarding retention. The concept regarding the regulation of text messages is understandable, but compares to the regulation of telephone calls. The process for overseeing these activities seems untenable and would likely require incredible resources although it should be the subject of continued discussion. The questions and issues in the area of private texts and private e-mails are currently under debate in the California court system; the most current ruling states that these items are not in the public domain. However, the issue is now to be heard by the California Supreme Court; the subsequent ruling should dictate the City's course of action.

Finding 12: Many departments have failed to post their sources of outside funding, as required by the Sunshine Ordinance.

Recommendation 12: The Jury recommends that the Ethics Commission and the Sunshine Ordinance Task Force review departmental web sites for compliance and notify non-compliant departments to immediately post their sources of outside funding, or face a show-cause before the Ethics Commission on why the information has not been posted.

Finding 12: The Commission does not have enough information to respond to this finding so it cannot yet agree. The Sunshine Ordinance section cited in the report does not apply to departments; only to individuals.

Recommendation 12: Will be partially implemented. The Ethics Commission Director will have staff notify all departments to remind officials and employees to follow this requirement and ensure that such postings are easy to locate on departmental web sites.

Finding 13: When violations of the standards in a departmental Statements of Incompatible Activities are enforced departmentally as a disciplinary matter, the Ethics Commission is not notified and the discipline is not disclosed to the public.

Recommendation 13: All violations of departmental Statements of Incompatible Activities should be disclosed to the Ethics Commission and posted on the Commission's web site.

Finding 13: Agree. Normally, departments are required to keep employee disciplinary measures confidential. In accordance with the Civil Service Commission's "Citywide Employee Personnel Records Guidelines," all employee personnel records—including records of completed/resolved/sustained disciplinary actions—must be maintained only in the employee's Official Employee Personnel File ("OEPF"). How long a disciplinary action remains in the OEPF and what is removed from an OEPF will vary depending on departmental policy and the applicable collective bargaining agreement. Employees' OEPFs are maintained in their departments; the Ethics Commission does not have access to those files. Thus, only the department head would have information regarding disciplinary matters. Moreover, even if the Ethics Commission did have that information, the right of privacy in the California Constitution protects employees from unwarranted disclosure of confidential information. Cal. Const. Art. I, Section 1. Accordingly, as information regarding disciplinary actions taken against an employee is considered a confidential personnel matter/confidential personnel information it is not normally disclosable. In addition, there are a number of other state laws protecting employee privacy not mentioned here.

Recommendation 13: Will not be implemented. The Commission and Director concur that this will not be implemented when it violates employee privacy rights.

Additionally, only a narrow range of five types of employee misconduct is disclosable, and even then ONLY when such matters are "confirmed." The "Good Government Guide" indicates that the process for determining if such matters are confirmed is "unclear." Further, the Guide states that "The privacy issues pertaining to these types of personnel records can be complex, and other considerations in addition to privacy, such as the need to maintain effective investigations, may be relevant."

The categories not exempt from disclosure are: 1) personal dishonesty, 2) misappropriation of public funds, resources or benefits, 3) unlawful discrimination against another on the basis of status, 4) abuse of authority, and 5) violence.

The disclosable categories are not necessarily addressed in each departmental SLA. Therefore, in order to carry out this recommendation, the Ethics Commission would have to take each reported case of employee misconduct, analyze whether it meets the disclosable threshold under local law, and then compare it with the requirements of the individual departmental SLA. There are at least 53 different departmental SLAs in existence; administering this proposal would be both difficult and incredibly time consuming and possibly incite a legal challenge. Finally, it is not even clear that the Ethics

Commission has the authority to make each department automatically report episodes of confirmed misconduct as a matter of course.

Finding 14: The Ethics Commission has increased compliance by notifying any employee who fails to file Form 700 within 30 days after the deadline that he or she must file or face potential penalties.

Recommendation 14a: The Ethics Commission should continue to routinely notify all non-filers of their obligation within 30 days of the state filing deadline.

Recommendation 14b: The Ethics Commission should recommend dismissal for any officer or employee who fails to file 90 days after the deadline.

Recommendation 14c: The Ethics Commission should recommend dismissal for any officer or employee who files a Statement of Economic Interest (Form 700) that is inaccurate and relevant to the position they hold.

Recommendation 14d: Now that all Form 700 filers file electronically, the Ethics Commission should require that all Form 700s be filed with them as well as with the Department filing officer.

Finding 14: Agree.

Recommendation 14a: Implemented. The Commission already does this.

Recommendation 14b & c: Will not be implemented. This action is outside of the Ethics Commission's jurisdiction. Under state law, only the FPPC can conduct enforcement matters regarding Forms 700.

Recommendation 14d: Will be implemented in the future. The Ethics Commission has already discussed doing this and it is an eventual goal. 2014 is the first year that Forms 700 filed with the Commission have been filed exclusively electronically. The Director notes that while this process was successful and resulted in only five non-filers as of this writing, it was also difficult to convert the many filers to a new process. The Commission needs a few years to settle into the new process but would like to introduce a change wherein all Form 700 filers in the City file directly with the Ethics Commission electronically. We envision doing this in the foreseeable future; a set timeframe is not possible because it will largely be determined by available funding.

Finding 15: The disclosures in Form 700 filings also may reveal violations of San Francisco laws that are enforced locally. This includes compensated advocacy before other commissions and arrangements that violate the locally adopted and enacted Statements of Incompatible Activities for each department.

Recommendation 15: The Ethics Commission should audit and act on violations disclosed through Form 700 filings of local prohibitions such as compensated advocacy and incompatible activities, and enforce these violations with strong action.

Finding 15: Agree.

Recommendation 15: Implemented. The Ethics Commission already does this. The Director notes that while we do not have the staffing resources to audit all Form 700 filings, we do review a portion of them based on investigative criteria, complaints filed and other information that is brought to our attention.

Finding 16: City officials travel expenses can be covered by gifts made by individuals, lobbyists, business associations, corporations or any other source, including those with financial interests in matters to be decided by the official. The public disclosure is limited to a list of donors or donor organizations contributing \$500 or more, but without specifying the total amount of the gift. Additionally, a significant amount of travel expenses are paid through organizations that do not disclose the names of the original donors.

Recommendation 16: The Ethics Commission should require full disclosure of contributions or payments for official travel of City officials, including the actual amount contributed and the names of the original donors. The official should also disclose what official business was conducted, including meetings, who participated in the meetings, topics, speeches given, ceremonies attended and other information.

Finding 16: Agree. Gifts of travel are governed by a myriad of state and local rules; additional disclosure may be advisable.

Recommendation 16: Requires further analysis. The Ethics Commission will conduct more analysis on this item in its upcoming plans for proposed changes to the Governmental Ethics Ordinance (GEO) anticipated next year. The Board of Supervisors will need to concur.

Finding 17a: There is useful information in the calendars of City Officials that should be readily available to the public.

Finding 17b: The Jury found calendar entries that did not meet the law's requirements, particularly in listing the meeting's subject matter and attendee names. As a result, it is not possible to crosscheck lobbyists' reports on their meetings with City officials with the calendar reports from the City officials.

Finding 17c: The training currently provided on the Sunshine Ordinance contains no materials on the keeping of official calendars as required by the Ordinance.

Recommendation 17a: The Ethics Commission staff should collect the official calendars prepared under the Sunshine Ordinance monthly, convert them to electronic form and post them online.

Recommendation 17b: The City Attorney and the Ethics Commission ensure that those officials subject to the calendar requirement, and their administrative staff, be trained on the law's requirements.

Findings 17a – 17c: Agree. Although there is a lack of explanatory information in the report, the Ethics Commission will not dispute these findings.

Recommendation 17a: Will not be implemented. The Ethics Commission does not have the staffing resources to do this; other priorities are wanting already. If required, agencies should each be required to post their calendars on their own web site.

Recommendation 17b: Will be implemented. The Director will work with the City Attorney's office to include this item in future annual Sunshine Trainings (although it does not apply to the vast majority of those who receive the training).

Finding 18: The Board of Supervisors is not subject to this calendar requirement. Many members did provide their calendars upon request, and the information in their calendars will be helpful for public understanding of their work.

Recommendation 18: The Board of Supervisors should adopt a rule subjecting themselves to the public calendar requirement of the Sunshine Ordinance.

N/A

Finding 19: The public record will be better served if post-public employment restriction waivers are granted by Commission resolutions that indicate the specific grounds for granting the waiver. In at least one instance, the Ethics Commission inappropriately interpreted the "extreme hardship" standard to grant a post-public employment restriction waiver.

Recommendation 19: The Commission should grant or deny post-public employment restriction waiver applications by resolutions that indicate specifically how the decision meets the conditions of the ordinance.

Finding 19: While in agreement with the first sentence of this finding, the Ethics Commission did not misinterpret the standard and disagrees with that part of the statement.

Recommendation 19: Will be implemented. The Commission approves of this idea and will issue written resolutions for future decisions when waivers are granted.

Finding 20: Both the Ethics Commission and the Sunshine Ordinance Task Force act in good faith. They are authorized to come to similar ends—transparency in government. However, there are legal and procedural differences between their process and their legal requirements. Therefore, the results of their work are not in harmony with each other.

Recommendation 20a: The Mayor's Office should establish a blue-ribbon committee of experts and stakeholders in open government, sunshine, and transparency, including former Sunshine Task Force members. The Committee of Experts should review and update the Sunshine Ordinance as necessary and should report to both entities and the Board of Supervisors recommendations that would result in coordination and respect for the functions of each entity.

Recommendation 20b: For now, arrangements should be made jointly by the Ethics Commission and the Sunshine Ordinance Task Force to have complaints heard by an independent hearing officer who would develop a consistent legally sufficient record of the case for the decision of each body. This would allow the meetings of the Task Force and the Commission to focus on broader policy issues.

Finding 20: Generally agree. Unlike the Sunshine Ordinance Task Force, which is an advisory body, the Ethics Commission is a law enforcement agency with the ability to impose monetary and other sanctions and its procedures are more substantial. Often, differences are based more on interpretive actions.

Recommendation 20a: The Ethics Commission defers to the Mayor's office.

Recommendation 20b: Will not be implemented. The Ethics Commission does not agree with this finding and believes it is in the public's best interest to have the Commission continue to investigate and hear Sunshine Referrals and complaints. Further, there is no mechanism in the Sunshine Ordinance to do this.

Finding 21a: The policy-making powers of the Ethics Commission are vested in the Commission itself, not in the Executive Director (absent express delegation by the Commission).

Finding 21b: The current structure where staff provides much of each Commission meeting's content creates the impression that the Commission is not an independent policy-making body.

Recommendation 21: The Board of Supervisors should provide the Commissioners an Executive Secretary separate from the existing Commission's employee base who will, among other duties, prepare the Commission's agendas, maintain minutes, lists of complaints, serve as a liaison for public input and interested persons meetings and assist a Commission member to be the parliamentarian.

Finding 21a: Agree.

Finding 21b: Disagree. There is no basis for this finding.

Recommendation 21: Will not be implemented in the foreseeable future. The Ethics Commission's staffing priorities are for more investigators and auditors. The Director notes that, while in an ideal world a Commission Secretary is desirable, for a commission this small it is not an urgent need.

Finding 22: While the Commission's Bylaws authorize committees, no committees have been established or meet. One result is that all matters requiring deliberation by the Commission are heard only once a month, in a process that can extend for many months and sometimes for years. If the Commission acts through its committee structure, issues can be explored and brought to the full Commission in a more developed state, thus providing a better basis for the Commission's actions.

Recommendation 22: The Commissioners should use their committee structure to focus on Ethics Commission issues. In the weeks between monthly meetings, each commissioner could take the lead on issues of concern to the Ethics Commission, such as developing policies on emerging campaign finance issues, transparency matters, complaint processing and training. This structure would allow for more interaction with the public and the regulated community.

Finding 22: Partially agree. Some Commission deliberations have extended for months but not for years, notwithstanding one case of extended delay created at the request of and as a courtesy to the Sunshine Ordinance Task Force.

Recommendation 22: Will not normally be implemented. The committee system was designed for larger bodies. A commission of only five members using a committee system would likely entail a larger number of meetings unwieldy for such a small body and would result in redundant sessions. Commissioners are volunteers donating a great deal of their time and wisdom to the city and have managed to conduct business appropriately. As needed, special meetings have been conducted to move more sizable or difficult issues before the Commission. Even Roberts Rules of Order states that the formality necessary in a large assembly would hinder the business of a small board. However, the Commission will consider using committees on an as-needed basis.

Finding 23: While the Charter mandates the City Attorney represent the Ethics Commission, conflicts have arisen repeatedly and the Ethics Commission has had to obtain outside counsel. We find these instances of conflict are likely to continue and that the Commission is best represented by a consistent set of lawyers who are not City employees.

Recommendation 23: That the Ethics Commission apply to the City Attorney for permission to engage outside counsel for advice and recommendations.

Finding 23: Mostly disagree. This is exaggerated. The Ethics Commission has obtained outside counsel only three times.

Recommendation 23: Needs further analysis. This Ethics Commission and the Director are willing to discuss the merits of this with the City Attorney, but has concerns about continuity and costs. Under the Charter, it is ultimately not the Commission's decision to make.

Finding 24a: The Jury was unable to locate and the Ethics Commission was unable to provide copies of any reports or notes of oral presentations to the Mayor or to the Board of Supervisors as required in the Charter to report annually on the effectiveness of San Francisco's ethics laws.

Finding 24b: The Jury was unable to locate any reports that reviewed changes in laws aimed at transparency and ethical conduct adopted in other jurisdictions that might be relevant to San Francisco. The only references were to changes based on court decisions that lessened public disclosure and protections against the influence of money in politics, even when those decisions were not based on San Francisco cases.

Finding 24c: The proper standard to judge the effectiveness of laws is to consider their ability to achieve the purposes set forth in each law when it was enacted.

Recommendation 24: The Mayor and the Board of Supervisors should request an annual written report from the Ethics Commission that meets the standards set out in the Charter for annual reviews of the effectiveness of the City's laws. This report should be posted on the Ethics Commission web site.

Finding 24a - c: No disagreement. Although the report states the need for constant adaptation of pertinent laws to deal with changing circumstances, it also fails to report that the Ethics Commission has vigorously reviewed the laws under its purview on an ongoing basis for just these reasons.

Recommendation 24: (Implementation is not up to the Ethics Commission.) This is not necessary. The Commission communicates to the Mayor and Board through memos, oral testimony, in-person meetings and the Annual Report. There has not been any apparent lack of communication between the Ethics Commission and City Hall and there have been no requests for additional reports.

Finding 25a: Periodic reviews of filed information are essential to ensure its validity.

Finding 25b: The Ethics Commission has undertaken little to no monitoring and auditing of the content of Lobbyists, Campaign Consultants, Conflict of Interest and Governmental Ethics filings beyond fines for late filing of statements; nor have they actively monitored whether former City employees abide by the restrictions on dealing with their former departments.

Recommendation 25: The Ethics Commission should begin to focus staff resources on monitoring and auditing other items within the Ethics Commission jurisdiction unrelated to campaigns such as the following ordinances: Conflict of Interest, Governmental Ethics, The Lobbyist Ordinance, Campaign Consultant Ordinance, and the Sunshine Ordinance.

Finding 25a – b: While true, this finding describes a huge volume of work. We disagree with the characterization of “little to no.”

Recommendation 25: Partially implemented. The Commission staff does much more of this work than the finding indicates, but lacks the staff and resources to do this work on a comprehensive basis. As it is, the staff can only audit a few non-publicly financed campaigns each year due to resource limitations. The Director notes that additional auditors are needed just for campaign finance; extending the audit reach is a desirable notion, but like many of these recommendations, this one comes with costs but no suggestions on how to meet them. Note: recent changes in the lobbyist ordinance will require audits of lobbyists in the future.

Finding 26: The Ethics Commission, though its staff, can catalog information reported elsewhere that is relevant for supplemental understanding of information currently reported locally. Links to this information would be a logical addition to the Ethics Commission web site.

Recommendation 26: The Ethics Commission should determine information reported elsewhere that is relevant for supplemental understanding of information currently reported locally, and provide links to it on the Ethics Commission web site, if it cannot be imported and posted.

Finding 26: Disagree. The concept is too broad to understand appreciably.

Recommendation 26: Already implemented. The Commission already provides links to the Secretary of State’s CAL-Access database and material on the Fair Political Practices Commission web site. The Ethics Commission Staff will continue to link to other relevant web sites where appropriate. The Director adds that it should be noted that the Commission’s website is already considered among the best and most comprehensive sites in the country.

Finding 27: The Charter requires that proposals to amend campaign finance and ethics laws explain how the change will assist in furthering the purpose of the law. The Ethics Commission proposals have not included any statements showing that its proposals will further the purposes of the law.

Recommendation 27: When a bill is proposed or passed to amend campaign finance and ethics laws, it should specify how it “furthers the purposes of this Chapter”.

Finding 27: Disagree. There is no basis for this finding.

Recommendation 27: Already implemented. All proposed changes to existing ordinances are accompanied by comprehensive staff memoranda explaining the details and purposes of the proposed changes.

Finding 28a: The Commission has not taken an active role in questioning the propriety of actions that skirt the edges of legality. This inquiry can feed into reports on the effectiveness of laws, and also remind public officials that they can be called to account for the appearance of impropriety.

Finding 28b: The general public needs an opportunity to talk to the Ethics Commission about their expectations and beliefs on ethical behavior of public officials. This initial discussion may help to highlight matters that appear to be improper.

Recommendation 28: That the Commission hold hearings, whether through their committees or in the full Commission, to ask the public to report matters that appear improper, then call the responsible officials before the Commission to account for and defend their actions.

Finding 28a: Disagree. There is no basis for this finding. The Ethics Commission staff frequently discusses the appropriateness of the behavior of public officials and whether such behavior warrants investigation. Such discussion often prompts changes to ordinances, rules and regulations.

Finding 28b: No disagreement. The public is free to, and very frequently does, communicate to the Commission through public comments and written and electronic messages.

Recommendation 28: Will not be implemented. This is a politically charged and extremely troubling idea; the potential for abuse is astonishing. Allowing anyone to force public officials to appear before the Ethics Commission to defend themselves against such charges invites anyone with personal agendas to create punitive actions against public officials – at will – whether there is a basis or not for such accusations. As troubling, this proposal does not regard actual law-breaking, but merely the appearance of impropriety and calls Constitutional issues directly into consideration. It is difficult to imagine how to create fair standards for such procedures and it seems clear that the Charter makes no such provisions.

Finding 29: The Findings and Declarations of Proposition J clearly articulate many public concerns with role of money in politics and should be re-adopted, perhaps adapted to be part of the general conflict of interest law - Chapter 2 of Article III of the C&GCC.

Recommendation 29: That the Ethics Commission hold a hearing on "Proposition J Revisited" to consider how some of its concepts apply today and whether the "public benefit" definition includes elements that should be incorporated into sections of the C&GCC, and specifically consider offering amendments to C&GCC which re-incorporate its Findings and Declarations into current San Francisco law, and to consider placing these amendments on the ballot.

Finding 29: Disagree. The intents and purposes of Proposition J were redrafted, clarified and expanded by Proposition E in 2003, in apparent response to concerns that existing law was

outdated, inadequate and confusing (and, as noted below, subject to a court challenge). The Board of Supervisors unanimously voted to place the measure on the ballot by a vote of 10-0, and all eleven supported the measure (Ammiano, Daly, Duffy, Gonzalez, Hall, Maxwell, McGoldrick, Newsom, Peskin, Sandoval and Ma. Ma was not present for the vote.). This measure was also supported by Common Cause. The measure was also supported unanimously at the Ethics Commission by Commissioners Melbostad, Planthold, Garcia and McCoy. Proposition E was adopted with support from 62% of the voters.

Recommendation 29: Will not be implemented. City laws prevent all City officials and employees from accepting anything of value for the duties they perform. In addition, local ordinance identifies a number of "restricted sources" who may not make donations to candidates and office holders. Note: The language in Proposition J was determined to be unconstitutional by the Los Angeles Superior Court in 2002. That ruling still stands and there is no reason to believe that it would fare differently in San Francisco, indicating that a measure to readopt Proposition J, as written, would be fruitless.

DRAFT