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CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: May 20, 2013
To: Members, Ethics Commission
From: John St. Croix, Executive Director
Re: The Budget Analyst Report and Summary of Comments Received at Following Interested Persons Meetings

On June 5, 2012, the Budget Analyst issued a report comparing the laws of the City and County of San Francisco and the City of Los Angeles to Supervisor Campos. The report examined four policy areas: campaign finance, enforcement and education, lobbying, and transparency. On December 4 and 10, 2012, and February 27, 2013, staff convened interested persons meetings to obtain public feedback on the policy options described in the Budget Analyst's report. (Five persons signed the attendance sheet on December 4, eight on December 10, and ten on February 27; not all attendees sign in.) This memorandum summarizes the comments received at the meetings and offers some recommendations from staff. Attached to this memorandum are written comments that staff received regarding the Budget Analyst's report. Based on direction from the Commission, staff expects in upcoming meetings to present legislative or regulatory proposals to address some of the concerns raised.

The notices of the IP meetings listed seven topics of discussion, generally in the order presented in the Budget Analyst's report.

1. Should San Francisco increase the period during which contractors, subcontractors, principals, etc. may not contribute to political campaigns from six months to twelve months, and prohibit contractors, subcontractors, principals, etc. from fundraising on behalf of candidates?

In Los Angeles, contractors, including their principals and subcontractors, cannot make a contribution to, or fundraise for, a candidate who sits on a City body that will be considering or approved their contract within a 12-month period, if the contract is worth \$100,000 or more. In San Francisco, a contractor, its principals and named subcontractors, may not make such a contribution during the period of negotiations or up to six months after a contract is approved, if the contract is worth \$50,000 or more. *See San Francisco Campaign and Governmental Conduct Code ("C&GC Code") section 1.126.*

The following comments were received at the IP meetings:

- The law should apply section 1.126's prohibitions to persons seeking permits from the Planning Department, the Board of Appeals or the Department of Building Inspection (but should not apply to applicants for permits regarding primary residences, small businesses or over-the-counter administrative requests).
- Members of boards and commissions should be barred from fundraising for or serving on finance committees of local candidates.
- The Commission should not narrow section 1.126 to exclude members of boards of directors of non-profit organizations that receive grants from the City from its application.
- Staff should inquire whether Los Angeles extends the ban to those who sit on charitable boards, and whether Los Angeles applies its contribution ban to public employee unions whose contracts must be approved by its Board of Supervisors.
- The length of the ban should not be extended to one year after contract approval because of potential 1st Amendment concerns.
- The Commission must tackle the issue of compiling lists of who can give to specific candidates during which periods. Los Angeles requires prospective contractors to disclose when they are seeking contracts from the City to the Los Angeles Ethics Commission ("LA Ethics"), but LA Ethics does not post that information online. LA Ethics also requires contributors to affirm to the committees to which they're contributing that they are not prohibited from contributing. Committees must provide such documents during audits conducted by LA Ethics. In Los Angeles, contractors who violate the law are barred from seeking city contracts for a period of up to four years. San Francisco should explore using an excel document to capture information about who is barred from contributing under the law.

Staff's comments:

Staff believes that section 1.126 warrants further review and action by the Commission. At its meeting on October 18, 2010, the Commission took several actions to amend section 1.126, including the following: adding or striking language to clarify that section 1.126 does not apply to grants or contracts with nonprofit organizations and other governmental agencies or constitutional corporations; that section 1.126 applies only to City elected officials and their boards or commissions, not to State agencies consisting of members appointed by City elected officials; and that section 1.126 applies only to contracts that are worth at least \$100,000, instead of \$50,000. Unfortunately, the draft amendments, part of a legislative package, did not receive substantial support at the Board of Supervisors.

For the reasons articulated in staff's October 6, 2010 memo, staff continues to believe that section 1.126 should apply only to contracts that are worth at least \$100,000. The Board of Supervisors normally is required to approve contracts worth \$10 million or more or with terms of

ten years or longer. Contracts worth under \$100,000 rarely require approval by elected officials. Alternatively, the Commission could consider amending section 1.126 so that it tracks Charter section 9.118, which lays out when Board approval of contracts and leases is necessary.¹

In addition, staff believes that it is worth exploring whether section 1.126 should extend to cover parties who seek land use-related approvals that exceed a certain threshold monetary amount, with the aim of targeting larger development projects. As well, it is worth exploring how to make information regarding who is subject to the contribution ban more accessible – currently, elected officers file reports with the Ethics Commission only when they have approved a contract; parties to contracts under negotiation are not disclosed at any centralized location. Next, to comply with the law, candidates have to search through all 1.126 forms filed within the past six months every time they receive a contribution. This is inefficient and impractical. Even though Commission staff scan paper 1.126 forms into electronic format, the scanned images cannot be searched.

At the IP meetings, a request was made to convert the SFEC Form 126 – Notification of Contract Approval to an electronic format, such as using Excel documents submitted via e-mail, to provide more accessible data. Commission staff is committed to converting paper disclosure forms to electronic format if the electronic conversion:

- a) Is cost effective to develop;
- b) Reduces the administrative cost to process the form;
- c) Provides more timely and accurate information to the public;
- d) Preserves the document in an open-data format; and
- e) Includes a free submission method for the filer.

Unlike FPPC campaign finance forms that are used statewide, local SFEC forms are unique to San Francisco and expensive to develop into electronic filing systems. The Commission has reduced the cost of developing electronic filing systems by sharing the costs with other cities and counties that use the same form and filing software. Commission staff has discussed building an SFEC Form 126 system with Netfile, but building a custom solution for a single form in San Francisco is not cost effective at this time. Netfile's electronic filing systems include critical components needed to create a reliable electronic submission process, including:

- a) Data entry software that the City can provide to users free of charge;
- b) Filings are stored in an open data format;
- c) Reliable and verifiable submission process and form validation;
- d) Electronic signatures;
- e) Automated filing management and reporting systems for staff; and
- f) Public access web sites to download filings and data.

¹ Under Charter section 9.118, contracts that are worth \$1 million or more in revenues to the City, or that have terms in excess of 10 years, or that require anticipated expenditures of \$10 million by the City, are generally subject to approval by the Board of Supervisors.

Staff has explored a variety of alternative lower-cost options to convert local SFEC forms to electronic format, including the City's SmartPDF program and spreadsheets, such as Microsoft Excel. These solutions lack some of the necessary components to create an effective e-filing system. For example, the City's SmartPDF program cannot accept electronic signatures, requiring filers to submit signed paper documents in addition to electronic documents. Microsoft Excel would require an additional investment by the Commission to support electronic signatures and the format is not supported by the Commission's existing filing management system, so the documents would need to be processed and posted manually by staff. In addition, document submission via e-mail is unreliable and not easily verifiable.

Commission staff is currently in preliminary discussions with Netfile to address the electronic filing of local SFEC forms and to develop a tool for staff to build local forms that would accommodate forms used in other cities and counties throughout California. This would reduce the development costs for custom San Francisco forms. Netfile has already developed a signature verification component to its existing electronic filing system. If filers sign documents using the system, then the paper forms could be eliminated, which reduces the administrative costs to the City and filer. Commission staff believes that it is better to develop a solution that fully addresses all of the issues with electronic filing, rather than using temporary fixes that create new administrative burdens for the filer and the City.

Until a more cost-effective local SFEC form solution is available, perhaps one way to ensure that those subject to the ban are not making campaign contributions is to require donors to certify to campaign committees that they are not subject to the ban in section 1.126 – like LA, such certifications would be subject to disclosure in any audit or investigation of the committee. While the law could be amended to require would-be contractors to disclose information regarding their principal officers in responses to Requests for Proposals or Qualifications to the departments to which they are seeking contracts, staff is uncertain that such information would be readily accessible to the public without the devotion of significant staff resources.

2. Should San Francisco explicitly prohibit any political contributions from registered lobbyists?

According to the Budget Analyst's report, in Los Angeles, lobbyists cannot make contributions to City officers whose office they are registered to lobby, or to candidates for the office that they are registered to lobby. Los Angeles Charter section 470(c)(11) also prohibits any elective City officer or candidate (or any of his or her City committees) from soliciting or accepting any contribution from any lobbyist or lobbying firm registered to lobby the office for which the candidate is seeking election, or the current City office, commission, department or agency of the candidate or officer. San Francisco has no such ban but all lobbyists must report contributions on a monthly basis as well as adhere to all other contribution restrictions and requirements. (A state lobbyist may not contribute to a state officeholder's or candidate's committee if the lobbyist is registered to lobby the agency of the elected officer or the agency to which the candidate is seeking election. The lobbyist also may not contribute to a local committee controlled by any such state candidate. (Cal. Gov't Code § 85702; FPPC Reg. 18572.))

The following comments were received at the IP meetings:

- San Francisco should bar campaign contributions from registered lobbyists to the officials that they lobby because it's pay-to-play politics, it's influence peddling, and it undermines the public's confidence in local government.
- San Francisco should not bar such contributions as long as they are promptly reported, as is currently the case.
- Should there be any contribution limits on lobbyists who wish to contribute to either candidate-controlled ballot measure or general purpose committees?
- The City should ban campaign consultants from making political contributions.
- There should be no contribution ban – one cannot buy influence for \$500.
- The real problem is unregistered lobbyists who influence decisions; lobbyists who register voluntarily are not the problem.
- It is a common-sense decision and best practice to ban contributions from lobbyists, as the state has done.
- There should be no pay-to-play politics; there should be a ban on lobbyist contributions, and there should be no bundling and no fundraising by lobbyists.
- Regarding behested payments, there is nothing that bans the non-profit recipient from giving money to campaigns. There is a failure to see how money flows.
- In Los Angeles, those who provide advice behind the scenes must disclose (two other persons disputed this claim).
- There are too many exceptions to the Lobbyist Ordinance.
- Attorneys should be treated as lobbyists; in Los Angeles, there is an exception for attorneys only with respect to litigation (but only the state may regulate the practice of law, and lobbying is not the practice of law).²
- Public officials should also disclose when they are subject lobbying efforts.
- There should be a separation between commissioners and those seeking public office; no City employee should sit on a commission because of conflicts.
- The Commission needs the rough and tumble of politics to inform its members – perhaps a political advisory body should be established.
- Land use permit seekers should not be allowed to bundle contributions.

² Under section 2.105(d)(1)(C) of the City's Lobbyist Ordinance, communications by a "person performing a duty or service that can be performed only by an attorney, an architect, or a professional engineer licensed to practice in the State of California, including any communication by an attorney in connection with litigation involving the City and County or a claim filed pursuant to Administrative Code Section 10.20-1 et seq." are not contacts that require the person to register as a lobbyist. Recently, Supervisor Chiu and City Attorney Herrera introduced legislation to modify the exception to the term "contact," such that the exception would apply to an "attorney communicating on behalf of a party or potential party in connection with potential or actual litigation involving the City and County or a claim filed pursuant to Administrative Code Section 10.20-1 et seq."

Staff's comments:

Staff spoke with LA Ethics staff and reviewed the laws in Los Angeles governing lobbyists. The prohibition in the Los Angeles Charter does not prevent lobbyists from delivering contributions as an intermediary or at the behest of another person. The prohibition in the Los Angeles Charter also does not prevent a lobbyist from contributing to a candidate or local City officer before the lobbyist or firm registers to lobby the office the candidate is seeking or the candidate's current office.

Lobbyists in Los Angeles are permitted to participate in fundraising activities for City officeholders or candidates for elective City office. LA Ethics staff stated that their City Attorney has advised that limiting lobbyists from participating in fundraising activities could create constitutional issues. Fundraising activities must be disclosed on the lobbyists' quarterly reports. Lobbyists in LA are also permitted to produce, pay for, mail, or otherwise distribute written political fundraising solicitations for any controlled committee of an elective City officer or candidate. These fundraising solicitations must be disclosed on the lobbyists' quarterly reports.

In San Francisco, all registered lobbyists are required to disclose all contributions of \$100 or more in their monthly disclosure filings (excluding contributions to general purpose committees).³ From 2010 to 2012, lobbyists in SF reported \$614,175 in contributions, which was approximately 1.89% percent of all contributions reported (excluding contributions to general purpose committees). During the same period, lobbyists reported that their clients contributed \$20,459 (excluding contributions to general purpose committees). From 2010 to 2012, lobbyists in Los Angeles reported a total of \$763,664.36 in political contributions mostly to local elective officers and candidates and many of which were delivered on behalf of or as an intermediary for others.

The Commission could consider several amendments to the Lobbyist Ordinance, such as banning contributions from lobbyists to City elective officers whom they lobby, and requiring an additional disclosure of fundraising activity, which Los Angeles defines as "soliciting a contribution or hosting or sponsoring a fundraising event or hiring a fundraiser or contractor to conduct any event designed primarily for political fundraising at which contributions for an elective City officer, candidate for elective City office, or any of his or her controlled committees are solicited, delivered or made." (See LA Municipal Code section 48.02.) The Commission could also consider requiring lobbyists to disclose written fundraising solicitations.⁴ However,

³ Section 2.110 (c)(8) of the Lobbyist Ordinance required a lobbyist to disclose "All political contributions of \$100 or more made or delivered by the lobbyist or the lobbyist's employer, or made by a client at the behest of the lobbyist or the lobbyist's employer during the reporting period to an officer of the City and County, a candidate for such office, a committee controlled by such officer or candidate, or a committee primarily formed to support or oppose such officer or candidate, or any committee primarily formed to support or oppose a ballot measure to be voted on only in San Francisco. This report shall include such political contributions arranged by the lobbyist, or for which the lobbyist acted as an agent or intermediary."

⁴ The Chiu-Herrera legislation would require lobbyists to retain "copies of all invitations sent by the lobbyist for fundraising events for an officer of the City and County, a candidate for such office, a committee controlled by such

because disclosures pursuant to the Lobbyist Ordinance are done electronically, the Commission must consider implementation costs associated with changes to the electronic filing system.

Separately, Los Angeles City Charter section 501(d)(2) prohibits anyone required to be registered as a lobbyist to be appointed to a commission whose members are required to file financial disclosure statements pursuant to the California Political Reform Act. Staff is not certain that this is necessary in San Francisco where the compensated advocacy law prohibits any officer from receiving any compensation to communicate in any manner on behalf of any other person with any officer or employee of the City with the intent to influence a governmental decision. *See* SF C&GCC § 3.224.

3. Should San Francisco increase the frequency with which candidates must report contributions and spending?

According to the Budget Analyst report, Los Angeles requires candidates to file 12 reports leading up to and including the primary and general election, whereas San Francisco only requires four reports leading up to and including the general election. However, the report does not explain that in a single election cycle, Los Angeles has both primary and general elections, whereas San Francisco has a single non-partisan election. In addition, in concluding that Los Angeles requires the filing of 12 reports, the Budget Analyst's report included reports for periods that occur *before* the calendar year of the primary and general elections, whereas in counting the four reports required in San Francisco, the Budget Analyst included only reports that cover the calendar year in which the election is held. When focusing on similar time-frames, there are only two reports that Los Angeles requires that San Francisco does not: a third pre-election report before any election; and, before a March primary, a quarterly report that covers through September 30 of the prior year.

Based on recently enacted state legislation, all committees that reach \$1,000 in activity will be required to file 24-hour contribution and independent expenditure reports during the 90 days – instead of 16 days – before an election. (*See* Assembly Bill No. 481, approved and filed September 24, 2012.) Under this recent change in state law, many local candidates will likely be filing many more reports that previously required in either Los Angeles or San Francisco.

The following comments were received at the IP meetings:

- San Francisco should add a quarterly report between January and June. (Under existing law, committees must file semi-annual reports on January 31 and July 31.)
- There is already a lot of reporting. But if a candidate has a lot of activity in the early part of an election year, and if such activities were required to be reported, it may influence whether other candidates decide to run for office. For example, quarterly reports may help potential candidates assess the field of candidates who have already started their fundraising efforts.

officer or candidate, or a committee primarily formed to support or oppose such officer or candidate, or any committee primarily formed to support or oppose a ballot measure to be voted on only in San Francisco.”

- There should be an extra pre-election period shortly after the August filing deadline so the public can learn more about candidates' supporters and contributors.
- With respect to supplemental disclosures – once a spending ceiling is lifted in San Francisco, no more disclosures are required.
- There should be information available regarding payees – don't just rely on 496s.
- The state is looking at legislation: to change semi-annual filings to quarterly or monthly (SB 3); pre-election reports – eliminating the 45-day report and requiring only a 12-day report; increasing reporting thresholds for contributions from \$100 to \$250 (AB 45), and for committees from \$1,000 to \$2000 (AB800). Thus, the Commission should pause to consider possible changes in state law before changing local reporting requirements, which may take place in 2015.

Staff's comments:

Staff recommends monitoring developments at the state level before deciding to require additional campaign disclosure reports at different intervals or thresholds.

4. Should San Francisco increase the personal contribution limits in order to offset the influence of “unregulated independent expenditures” on City elections?

In Los Angeles, the current contribution limit from any person is \$700 per election to a City Council candidate and \$1,300 per election to a candidate for Mayor, City Attorney or Controller. In San Francisco, the current contribution from any person is \$500 per candidate for City elective office.⁵ Both Los Angeles and San Francisco have aggregate contribution limits.

The following comments were received at the IP meetings:

- There should not be a change in the \$500 contribution limit.
- On contributions, San Francisco could follow Los Angeles' approach with respect to establishing aggregate limits by increasing the cumulative amount to 2 times \$500 per City elective office appearing on the ballot, but perhaps not for Community College Board and Board of Education elections.
- For ranked choice elections – the multiplier should be three times \$500 per City elective office appearing on the ballot, but should be limited to the specific office. For Community College Board and Board of Education races, the maximum amount of contributions from any person to all candidates should be the number of offices up for election times \$500 with no multiplier.

⁵ The \$500 per person contribution limit has been in effect since before the year 1983, when voters approved Proposition N; in 2005, the Commission voted to re-enact the \$500 limit. In San Diego, the current contribution limit in any single election from any individual is \$500 to a candidate running for a City Council district office and \$1,000 to a candidate running for Mayor or City Attorney. *See* San Diego Muni Code §27.2935.

- Why should the same \$500 limit apply to City-wide office elections as to district-wide elections? A City-wide office is 11 times the size of a district office, and it costs more to run for City-wide office. San Francisco should look at Los Angeles and try to stem the influence of independent expenditures by increasing or adjusting the per person contribution limits for City-wide offices.
- There should be no enforcement against small committees with less than \$1,000 in activity.
- Ethics should not propose an increase in contribution limits until the issue has been publicly and thoroughly vetted.

Staff's comments:

In October 2011, the Commission approved language to CFRO section 1.114(a) to clarify that, in accordance with the Charter, the Commission must adjust limits according to changes in the Consumer Price Index. Under the proposal, the adjustments would be automatic – with the contribution limit rounded to the nearest hundred dollars, using a baseline of February 2012, provided that the Commission ratifies any changes. Unfortunately, this proposal, which was part of a package of CFRO amendments that would have also consolidated disclosure and disclaimer requirements, did not receive support at the Board of Supervisors. Staff recommends that the Commission either consider adjusting the contribution level for inflation, for some if not all the City elective offices, or revive the proposal that it approved in 2011.

In addition, staff recommends that the Commission consider possible changes to the aggregate contribution limits. In Los Angeles, the cumulative limit from any person to all candidates is \$700 multiplied by the number of City Council offices appearing on the ballot at the election plus \$1,300 multiplied by the number of City-wide offices appearing on the ballot at that election, but no less than two times the limit on contributions to City Council candidates in a single election. For the 2013 election, three City-wide offices and eight City Council offices are up for election; thus, the cumulative contribution limit that any person may make is \$9,500 ($\$700 \times 8 + \$1,300 \times 3$).

In San Francisco, CFRO section 1.114(a)(2) provides that no person may make any campaign contribution that will cause the *total* amount contributed by that person to all candidates in an election to exceed \$500 multiplied by the number of City elective offices to be voted on at that election. In 2011, staff recommended and the Commission approved deleting this provision because it brought about incongruous results. In 2011, three City elective offices were up for election, all of them City-wide offices – as of August 8, 2011, 36 candidates declared for Mayor, five declared for District Attorney, and seven declared for Sheriff. Thus, at least 48 candidates were seeking City-wide elective office.⁶ But because of the limitation in section 1.114(a)(2), an individual may contribute a *total* of 3 times \$500, or \$1,500, to all candidates combined. Candidates had expressed to staff that it was difficult for some of them to raise funds because of the limitation. In contrast, for the November 2010, where five district supervisor seats and eight City-wide offices (including three on the Board of Education and three on the Community

⁶ As of August 12, 2011, 25 candidates had qualified to be on the ballot in November 2011.

College Board) were up for election and a total of 63 candidates ran for office, an individual was able to contribute up to 13 times \$500, or \$6,500. The current aggregate contribution limit in section 1.114(a)(2) is also incongruous because it predates the City's adoption of ranked-choice voting, an election system that explicitly contemplates that many voters would support multiple candidates for a single office.

At the Interested Persons meetings, it was suggested that the Commission consider changes to the aggregate contribution limit such that more funds are available to candidates who run in ranked-choice elections. For example, a multiplier of three should be added to such elections; no changes should apply to Community College Board or Board of Education races, where the candidates who receive the most votes in the race win. Under this scenario, for the three City-wide offices and the D4 Board of Supervisors seat up for election in November 2013, the most any person may contribute to all candidates would be $4 \times 3 \times \$500$, or \$6,000, rather than $4 \times \$500$, or \$2,000.

5. Should San Francisco reduce the reporting requirement threshold from \$5,000 to \$1,000 for independent expenditures by committees or persons on behalf of or against a candidate or measure?

State law requires the supplemental reporting of independent expenditures when the expenditures reach \$1,000 or more for a candidate or measure during any reporting period and any time during the 90-day period immediately preceding an election. Los Angeles additionally requires notification within 24 hours, on each occasion that an independent expenditure or member communication reaches \$1,000 or more regarding a candidate or measure.

Except for reporting requirements during the petition circulation period, San Francisco does not have additional reporting requirements regarding expenditures related to ballot measures.

However, San Francisco requires third parties to report spending on candidates as follows:

- a. In races where there is at least one publicly financed candidate or where at least one candidate has accepted the voluntary expenditure ceiling, third parties must file notices within 24 hours of reaching \$5,000 per candidate in independent expenditures, member communications or electioneering communications;
- b. Any person who pays for a mass mailing that costs at least \$1,000 and that is an independent expenditure regarding one or more candidates must file a report within five business days of the mailing or, if the date of the mailing occurs within the last 16 days before an election, within 48 hours of the date of the mailing;
- c. Any person who pays for an electioneering communication that costs at least \$1,000 must file a report within 48 hours of each disclosure date; and
- d. Any person who pays for a persuasion poll must file a report within 48 hours of certain milestones.

The following comments were received at the IP meetings:

- Yes, the reporting threshold should be lowered to \$1,000. During an election, one could buy online ads – 10,000 impressions for \$900 for distribution citywide. For

\$1,000, one could blanket coverage in a supervisorial district; for \$5,000, everyone could pay for 12 separate automatic – or “robo” – calls over an entire district.

- There should be information in the forms regarding vendors.
- The \$5,000 reporting thresholds were put there for a reason, so there should be no change.

Staff's comments:

As with respect to Topic 3, staff recommends monitoring developments at the state level before deciding to require additional campaign disclosure reports at different intervals or thresholds.

6. Should San Francisco reduce the amount of time for which extensions of credit to a campaign are reclassified as contributions from the current six months to one month?

In Los Angeles, extensions of credit, other than loans, for a period of more than 90 days (previously, 30 days) are subject to contribution limits. In San Francisco, a candidate committee that accepts goods or services on credit must pay for such accrued expenses in full within 180 calendar days to avoid reclassification as a contribution. Once any such expenses are reclassified as contributions, local contribution limits would then apply.

The following comments were received at the IP meetings:

- A candidate with debt must raise money – if you have automatic conversion, there will be a violation, and at the \$500 contribution limit, the candidate will reach this violation sooner. Los Angeles has higher contribution limits that would make this “automatic conversion” into a violation less likely. Thus, do not change the law.
- Try changing the time period to 90 days – vendors want to be paid.
- The accrued debt law should also apply to general purpose recipient committees and ballot measure committees. Some of these committees are financed by loans.
- There are some vertically integrated campaign operations that provide bundling services to campaigns and that may require shorter timeframes for reclassifying unpaid expenses as contributions.

Staff's comments:

Staff does not recommend a change in the law at this time. In discussions with LA Ethics, it was revealed that LA Ethics changed the conversion period from 30 days to 90 days because 30 days was deemed too short and did not work. Staff also did not find any empirical evidence to show that a 90-day period would be any more effective than a 180-day period.

7. What changes, if any, should San Francisco adopt to its enforcement policies so that its results more closely match the results in Los Angeles?

The Budget Analyst states that investigations into ethics violations result in significantly different outcomes in San Francisco and Los Angeles, with San Francisco dismissing 76 percent

of its cases compared to 19 percent in Los Angeles, and Los Angeles levying higher average fines of \$7,746 compared to \$6,088 in San Francisco over the seven-year period ending in November 2011. In discussions with LA Ethics, staff has learned that LA Ethics includes amounts received pursuant to its infractions and disgorgements policies. Also, LA Ethics staff performs a preliminary evaluation of any complaint to determine whether sufficient evidence exists to move a matter forward to a formal investigation before it deems a complaint a “complaint.” San Francisco recently adopted preliminary evaluation steps similar to those taken in Los Angeles. San Francisco has also begun to review campaign reports to identify excess contributions.

The following comments were received at the IP meetings:

- When an investigation is over, San Diego Ethics Commission makes its files available to the public, but not Los Angeles or San Francisco.
- Confidentiality has been problematic for some time now – there needs to be more transparency. Only confidential witnesses and unique investigatory methods should be confidential; but a change to the Charter is required if the City is to change the way it handles the confidentiality of its investigations.
- San Francisco should budget for an independent audit of Ethics’ enforcement policies.

Staff’s comments:

The Budget Analyst report found that, in the period from October 18, 2004 through November 14, 2011, Los Angeles heard 354 enforcement cases compared to San Francisco’s rate of 137 cases. It further stated that San Francisco dismissed 76% of cases compared to Los Angeles’ dismissal rate of 19%. The Budget Analyst report also outlined that Los Angeles issued higher fines and approved higher settlement amounts than San Francisco. Los Angeles had an average fine/settlement amount of \$7,746 compared to San Francisco’s average of \$6,088, with San Francisco’s settlement amounts most frequently being less than \$1,000.

Addressing the difference in the number of complaints between the two agencies, staff reviewed the number and type of complaints LA Ethics brought as enforcement actions to determine why there was such a huge difference. As of the date of this writing, LA Ethics initiated a total of 496 formal complaints since 1993.⁷ Of these complaints, 203 were “excess contribution” cases. This means that LA had 293 cases for purposes of comparison. Approximately 41% of all LA Ethics’ enforcement matters were for excess contributions. According to LA enforcement staff, LA Ethics handles excess contribution violations as enforcement matters. In addition, LA Ethics initiates an enforcement action against the individual contributor who contributed in excess of the limit, as well as an enforcement action against the committee that accepted the excess contribution. LA Ethics enforcement staff stated that by holding both the contributor and committee accountable in an enforcement action, there has been greater compliance and vigilance by committees to ensure that contribution limits are not exceeded. LA Ethics also employs a mechanism to allow a committee to cure the violation prior to initiating an enforcement action. In addition, a contributor who is a first-time offender of the contribution

⁷ As of the same date, since 1995, San Francisco has initiated 508 formal complaints.

limit will not incur a penalty if he or she stipulates to the violation. To date, San Francisco has handled excess contributions as forfeitures – outside of its enforcement processes – that require the offending committee (but not yet the contributor) to pay the excess contribution to the City’s general fund. However, staff is ready to make recommendations to move these matters into enforcement. In addition, staff proposes moving violations of several other laws into enforcement, including the ban on contributions from corporations to candidate committees, missing contributor information, and violations of contribution limits. Staff is currently working on set of guidelines for the Commission to consider.

With respect to the difference in the rate of dismissals between LA Ethics and Ethics, at a Board of Supervisors Rules Committee hearing, the Budget Analyst representative indicated that he looked only at information that was available on LA Ethics’ website and did not look at any information as to how LA Ethics accepts or initiates a formal complaint. In conversations with LA Ethics staff, staff learned that LA Ethics employs a rigorous “preliminary review” process that occurs prior to an allegation becoming a formal complaint. LA Ethics’ enforcement staff also noted that the dismissal rate presented in the Budget Analyst report does not reflect the number of cases that are dismissed in that preliminary review process because its confidentiality provisions prohibit the disclosure of such information to anyone. LA Ethics stated that the dismissal rate reflected in the Budget Analyst report would only be representative of those cases in which a complaint was brought to a hearing and dismissed by the Los Angeles Commission. In contrast, San Francisco historically initiated a formal complaint prior to conducting a preliminary review. Since 2011, however, staff has conducted a much more extensive preliminary review to ensure that formal complaints are only brought forward based on very credible information. In addition, LA Ethics does not handle alleged public records request violations as enforcement matters, as San Francisco does – such complaints have generally resulted in dismissals for various reasons. The Ethics Commission has already completed the process to address public records complaints in a different manner, outside of the regular enforcement regulations. Given this information, it is not possible to determine that actual percentage of dismissals by LA Ethics.

With respect to the settlement and fine amounts, in both Los Angeles and San Francisco, settlements and administrative penalty amounts are ultimately determined by the respective Commissions. Both agencies look at the totality of all the factors of a complaint before coming to a proposed settlement amount. Staff does not believe that establishing a fixed fine structure that covers every violation would be effective; however, staff is ready to propose establishing more concrete guidelines as to settlement and penalty amounts regarding some violations – this would allow respondents to have a more reasonable idea of their potential liability. Staff is currently working on set of guidelines for the Commission to consider.

Additional comments and remarks:

- *Acceptance of contributions on City premises*

Regarding the acceptance of contributions in City Hall or other City-owned buildings, San Francisco Campaign and Governmental Conduct Code section 3.230 prohibits a City officer or employee from participating in political activities of any kind while in uniform, during working hours, or on City premises, which means the law already precludes the practice; however, the

law could be made more explicit by banning the making or receipt of political contributions in City Hall or any City-owned property.⁸ Under state law, no person may receive or personally deliver or attempt to deliver a contribution in the State Capitol, in any state office building. *See* CA Gov't Code § 84309. In Los Angeles, Municipal Code section 49.7.11(B)(2) states the following:

A person shall not receive, personally deliver, or attempt to personally deliver a contribution in City Hall, another City office building, or an office for which the City pays the majority of the rent. This prohibition does not apply to the following:

- a. City property that is rented by a member of the public, unless the lease or rental agreement expressly incorporates this prohibition.
- b. A contribution that is received by mail, if it is forwarded to the candidate, the candidate's campaign treasurer, or the candidate's controlled committee within seven working days of its receipt.

- *Prohibiting City Commissioners from Fundraising*

In its February 27, 2013 letter, the Friends of Ethics (“FOEs”) states, “Los Angeles prohibits commissioners from fundraising for other candidates. In San Francisco, city commissioners are the lifeblood of pay-to-pay style politics as donors cultivate those contacts for their own interests.” In Los Angeles, a member of a City board or commission who is required to file a Statement of Economic Interests, or a general manager of a City department, cannot solicit, direct, or receive a contribution from a person who has or, in the preceding 12 months had, a matter involving City action pending before the board or commission member or general manager. *See* Los Angeles Campaign Finance Ordinance (“LA CFO”) § 49.7.11(C)(1). Nor may such a person engage in prohibited fundraising on behalf of an elected City officer, a candidate for elected City office, or a City controlled committee. *See* LA CFO § 49.7.11(C)(2)⁹ This prohibition does not apply to members of City boards or commissions or general managers who are engaged in fundraising on behalf of their own candidacies for elected office. (*Ibid.*) As in San Francisco, except for members of the Ethics Commission and its department head, there does not appear to be any law that specifically bars commissioners and department heads from making direct contributions to elected City officers, a candidate for City office, or a City controlled committee. *See* Los Angeles Charter § 700(d).

In San Francisco, there is no specific prohibition on commission and board members from fundraising for local candidates. However, San Francisco has incorporated into local law the state prohibition that members of appointed boards and commissions may not solicit contributions in excess of \$250 from persons who are parties to, or participants in, certain proceedings pending before them, and from making decisions affecting a source of campaign contributions of more than \$250. (*See* CA Gov't Code § 84308.)

⁸ The definition of “City premises” in section 3.230(c) specifically excludes City-owned property that is made available to the public and can be used for political purposes.

⁹ A “City controlled committee” is a committee created for City purposes and controlled by an elected City officer or a candidate for elected City office. LA CFO § 49.7.2.C.

- *Right of Citizens to Bring Civil Actions*

The FOEs letter states that the Budget Analyst report found that Los Angeles “allows private citizen suits to enforce penalties. San Francisco does not.” This is not true. The Budget Analyst report, in the “Enforcement and Education” section on page 6, states “in Los Angeles, penalties can also be imposed for civil actions brought by citizens independent of an Ethics Commission investigation. In San Francisco, penalties can only be imposed as the result of Ethics Commission or court proceedings.” Staff reviewed the enforcement provisions for Los Angeles and San Francisco to compare the accuracy of the Budget Analyst’s finding regarding civil enforcement. In both Los Angeles and San Francisco, there are several enforcement provisions.

- *Civil Actions Regarding Campaign Finance Violations*

Los Angeles provides that a resident may bring a civil action against any person who is subject to the LA CFO, provided that the resident first files a request with the LA Ethics to commence an action. LA Ethics must respond within 40 days notifying the resident if it intends to file a civil action. If LA Ethics does commence a civil action, no civil action may be filed by any resident. (*See* LA CFO § 49.7.38(B).)

San Francisco provides that a voter may bring a civil action to enjoin or compel compliance with Campaign Finance Reform Ordinance provided that the voter first notifies the City Attorney. No voter may commence a civil action if either the Ethics Commission has issued a finding of probable cause or the City or District Attorney have already commenced a civil or criminal action, or if another voter has already filed a civil action. (*See* C&GC Code § 1.168(b).)

In both jurisdictions, a private citizen may commence a civil action alleging a violation of campaign finance laws. Both jurisdictions require that notice be provided to a city agency to initiate an action, and both jurisdictions limit the right of a resident or voter to pursue a civil action if the municipality has already commenced one.

- *Civil Actions Regarding Conflicts of Interest*

Los Angeles provides that any resident may bring a civil action against any person subject to Los Angeles’ Governmental Ethics Ordinance (“LA GEO”) provided that the resident first makes a request to the Ethics Commission to commence a civil action. LA Ethics has 40 days to respond to indicate if it will commence a civil action. If LA Ethics chooses to commence a civil action, then the resident is precluded from commencing the action. (*See* LA GEO § 49.5.19(B).)

In San Francisco, a resident may commence a civil action to enjoin or compel compliance with a conflict of interest of governmental ethics law provided that the resident notifies the City Attorney of the intent to file a civil action. The City Attorney must notify the resident within 120 days of receipt of the notice whether or not it will commence the civil action. No resident may file a civil action if the Ethics Commission has made a finding of probable cause, the City Attorney commences a civil action, the District Attorney files a criminal action, or if another resident has filed a civil action.

In both jurisdictions, a private citizen may commence a civil action alleging a violation of conflict of interest or governmental ethics laws. Both jurisdictions require that notice be provided to a city agency to initiate an action, and both jurisdictions limit the right of a resident or voter to pursue a civil action if the municipality has already commenced one.

- *Civil Actions Regarding Lobbying*

Los Angeles provides that the City Attorney may file a civil action against any individual subject to the Los Angeles Municipal Lobbying Ordinance (“LA MLO”) for violations of that ordinance. There is no specific provision establishing the right of a private citizen to commence a civil action based on violation of its lobbying ordinance. (See LA MLO § 48.09(C).)

The San Francisco’s Lobbyist Ordinance is similar: it empowers the City Attorney to file a civil action for violations of the Lobbyist Ordinance, with no specific provision allowing for private citizen actions. (See C&GC Code § 2.145(c).)

- *Civil Actions Regarding Campaign Consultants*

Los Angeles has no provisions, enforcement or otherwise, that regulate the conduct of campaign consultants. San Francisco’s Campaign Consultant Ordinance provides that the City Attorney may file a civil action against individuals subject to the ordinance. There is no specific provision regarding the right of a City resident to file a civil action alleging Campaign Consultant Ordinance violations.

- *Civil Grand Jury Report*

The FOEs expressed its “continued disappointment with the Ethics Commissions [sic] work to protect the public trust. [It] had hoped that the 2011 Civil Grand Jury report and [Budget Analyst report] would bring a renewed vigor and commitment to the mission of the Ethics Commission.” This issue was also raised by former Ethics Commissioner Eileen Hansen at the Interested Persons meeting held on February 27, 2013. Ms. Hansen asked if the Ethics Commission had addressed the findings of the Civil Grand Jury report or considered any of its recommendations. She stated that she was troubled at the inaction and lack of attention to public feedback regarding the Civil Grand Jury report.

The Civil Grand Jury, which issued its report on June 20, 2011, made seven findings and recommendations. The Ethics Commission scheduled the matter to be discussed at its next regular meeting on July 11, 2011. At that meeting, the Executive Director proposed responses for the Commission to discuss and for the public to provide comment. The Commission discussed each of the report’s seven findings and listened to the public’s input. The Commission continued the matter to the next meeting so that staff could redraft a response for discussion taking into consideration the Commission’s discussion and the public’s comments and suggestions.

At the next meeting held on August 9, 2011, the Commission solicited the public’s input prior to discussing the revised response. Following robust discussion with the Commission and the public, the Executive Director issued a response to the Civil Grand Jury report on August 12,

2011, as directed by the Commission. The response highlighted several areas identifying erroneous findings or issues that the Commission had already addressed. The response also highlighted recommendations that the Commission accepted or adopted.

Attached to this memorandum is the August 12, 2011 report from the Commission to the Honorable Katherine Feinstein about the Civil Grand Jury's findings. Also attached are status reports to the Controller's office regarding the findings.

- *Cash Contributions*

The Budget Analyst report noted that in Los Angeles, cash contributions are limited to \$25. State law and San Francisco allow for cash contributions that are less than \$100. Ethics staff has learned that contributions made by money orders or cashiers' checks up to \$99.99 are allowed in Los Angeles. The report correctly noted that San Francisco requires any cash contribution (including money orders or cashiers' checks) to be accompanied by written documentation from the contributor in order for the cash contribution to be matched with public funds.

- *Outreach*

The FOEs letter states, "Many of us have had no outreach from the Ethics Commission, including regarding the upcoming Interested Persons meeting, although the Commission directed staff to create a robust outreach for community views on the June 5, 2012 Rose Report comparing San Francisco to Los Angeles ethics policy and practices."

The public can opt to receive updates regarding the Commission's activities from a wide variety of sources. Staff's outreach efforts are ongoing and thorough, but staff is not in a position to compel public interest.

- *Interested Persons List*

The Interested Persons List is a mailing list that distributes press releases and meeting agenda packets, including links to all supporting documents. The public can join the Interested Persons List by completing a form available on the Commission's web site. There are over 90 subscribers to the list, including Commission staff.

- *Interested Persons Meetings*

Interested persons may also choose to attend Interested Persons Meetings, which in the past have covered topics such as proposals to amend the Campaign Finance Reform Ordinance, the Lobbyist Ordinance, and other laws or to upgrade the electronic filing system. Meeting notices are distributed via the Interested Persons Mailing List and on the Internet via the Commission's web site and other avenues described in the next section.

- *Internet Outreach*

The Commission's website publishes updates regarding the Commission's work on a variety of social networks, subscription services, and external web sites that allow the public to follow the

Commission's work without regularly checking the Commission's web site. Some of the available Internet services include:

- *Twitter*: Over 820 members of the public, organizations, and other City departments receive updates regarding the Commission's work on Twitter.
 - *Facebook*: Over 280 members of the public, organizations, and other City departments receive updates regarding the Commission's work on Facebook.
 - *RSS ("Really Simple Syndication") feeds*: Updates to the Commission's website are published via a web subscription method known as RSS. The public can subscribe to all new postings to the web site, or for a variety of subsections of the site including: advice letters, agendas, audits, events, education and training opportunities, gifts of travel filings, minutes, meeting recordings, news, payments made at the behest of an elected officer filings, and lobbyist disclosure report filings. RSS feeds are available for other web sites to redistribute Commission information.
 - *Commission Meeting Recordings*: Since June 2009, audio recordings of Commission meetings have been published on the Commission's website. Both video and audio recordings have been available online since January 2012. Video recordings can be streamed live or retrieved from an archive.
 - *Calendar of Events*: A calendar is available on the Commission's website to track important deadlines, interested persons meetings, training opportunities, events, and Commission meetings. The calendar can be viewed on the Commission's website, or the public can subscribe to the calendar and receive updates automatically from within their own calendar application or on their mobile phone.
- *Solicited vs. Unsolicited Communications*

With the exception of unsolicited notices to the regulated community regarding upcoming filing obligations, trainings, interested persons meetings, audit selection(s), updates to the electronic filing system, and feedback for changes to laws and regulations, the Commission has traditionally taken an approach of only providing communications to the public, organizations, and media that expressly asked to be sent information and updates regarding the Commission's work. The Interested Persons List and all of the Internet subscription services currently require some action by the public to request information and updates regarding the Commission's work. Whether it is completing a form to be on a mailing list, or clicking a button or link on the web, these actions confirm that the member of the public actually wants to receive additional information and allows the public to specify which information is important to them.

At previous Commission meetings, there have been suggestions to add organizations and political clubs to the Interested Persons Mailing List that did not previously request to receive communication from the Commission as a means of increasing the Commission's outreach efforts. Increasing the Commission's outreach through unsolicited communications to organizations creates new issues such as:

- If the Commission were to add organizations, such as political clubs, to the mailing list, which organizations should the staff add to the list and how would the organizations be identified?

- Is there a risk of leaving organizations off the list such that the Commission is perceived as communicating only with a selective group of organizations which may tarnish the perception of the Commission as a non-partisan and impartial entity?
- For electronic communications, how does the Commission avoid becoming listed as a “spamming” organization by those who do not want to receive communications from the Commission?
- Is there any evidence that distributing unsolicited information regarding the Commission’s work to organizations will actually achieve the goals of increasing interest and respect for the Commission’s work?

Staff believes that unsolicited communications create risks for the Commission without evidence that they will generate new interest in the Commission’s work or increase participation at Commission meetings. As the public can increasingly follow the Commission’s activity over the Internet, it is likely that the use of the Commission’s public access room resources and in-person participation at Commission meetings will decline. Internet outreach actually allows discussion of the Commission’s activity to occur outside of Commission meetings by allowing the public to stay engaged at work or home through listening to Commission meetings on-line, receiving tailored updates regarding subjects that are of interest, or communicating on social networks outside of Commission meetings.

- *Making Information Publicly Accessible*

The FOEs state, “Compared to ten years ago, when Ethics had a smaller staff and smaller budget, today’s commission provides less public notice of campaign and lobbying activity, places obstacles in the way of easy access to information on non-compliance with our laws, and makes less information available to the public. ... There have been no press releases on the quarterly lobbyist reports in more than seven years. There is no list of city officials who have failed to file the required public disclosures of their financial interests. Instead, the public must undertake a search name by name of every filer to find the non-filers. There is no information for contributors to educate them about the law, and no information on any Ethics activity in languages other than English. ... All of this represents significant steps backward from the Ethics Commission’s launch and first decade.”

The Commission has made significant advances in making disclosure reports and data more accessible to the public in the past eight years. Previously, many campaign finance statements, and all lobbyist, campaign consultant, and Statement of Economic Interests reports were only accessible in paper format and could only be viewed during regular business hours on weekdays. The Commission had a limited electronic records management system, but the information in the system was only available to the public upon request to Commission staff and was not available on-line. One campaign finance statement, Form 460, was available in electronic format. Large campaign finance datasets were only available to the public upon request and were not available on-line. Lobbyist reports were summarized and released in quarterly summary reports, but the information in the report was outdated by the time the public received it. Electronic lobbyist data did not exist and lobbyist reports could not be viewed on-line. A list of filers who submitted a Statement of Economic Interests form during the current calendar year was available on-line,

but the public could not view the content of the filings and the list was removed from the web site at the end of the year when the new list needed to be posted.

Today, the Commission offers extensive access to the Commission's internal records management systems and disclosure data. All campaign finance, campaign consultant, lobbyist, and Statements of Economic Interests filings received by the Commission are entered into the Commission's records management system and are available on the Commission's web site. Disclosure statements are either instantly made viewable on the Commission's web site through electronic filing or scanned into electronic format and posted on-line by Commission staff. All of the most frequently submitted FPPC campaign finance statements are submitted in electronic format. As of March 2013, all committees that file itemized campaign statements with the Commission are required file electronically. In addition, all electronically filed campaign finance and lobbyist filings include machine readable transaction data that can be exported into spreadsheets using the Commission's web site. In fact, the public has access to the same campaign finance transaction data reports and filing records used by the Commission staff to audit a committee.

In 2010, the Commission converted all lobbyist filings to electronic-only filings. The electronic system updates summary reports of lobbyist activity, a search engine, and an Application Programming Interface (API) on the Commission's web site within seconds of receiving a lobbyist's monthly disclosure filing. The Commission no longer publishes static quarterly lobbyist report summaries because live-updating summaries of monthly lobbyist reports are available on the Commission's web site. The practice of writing a static lobbyist quarterly summary report is obsolete.

The Commission has also partnered with the Department of Technology to integrate the Commission's campaign finance and lobbyist data with the City's new DataSF web site. The DataSF web site allows the public to "mashup" various City datasets, build charts and graphs, and access the data via an API to integrate the data into other web sites and applications. The Commission not only provides data to DataSF, but used the system to deliver dashboard reports of campaign finance activity during the November 6, 2012 election and interactive graphs in the past two public financing reports. The public is able to track candidate committee activity, ballot measure committee activity, third-party spending, public financing disbursements, and expenditure ceilings using graphs built with DataSF. Each graph provides an unprecedented level of transparency, because the system allows the public to delve into the raw data used to build the summary graph itself.

Statements of Economic Interests (SEI) are filed on paper, scanned into electronic format, and made viewable on the Commission's web site. A complete list of filers and non-filers can be downloaded from 2007 to 2013 by date range, department, or filer. The Commission's web site provides live access into the Commission's SEI records database. The assertion that the public must undertake a search by name of every filer to find the non-filers is incorrect.

Commission staff is currently developing new electronic submission practices for public finance matching funds requests to eliminate the reliance on Microsoft Excel, and to move towards a

single data entry system for both public financing forms and campaign finance statements. This change would reduce the burden on filers and administrative costs.

The Commission has never had the resources to provide translation of its materials into languages other than English. In Los Angeles, Ethic Commission documents are not provided in languages other than English as well. Los Angeles provides a link to a translation widget from Google, but automatic computer translation of languages provides inconsistent and extremely poor translation of documents. Staff believes it would be a disservice to the public to advertise Google's tool on its web site and to encourage its use when staff knows it will fail to provide accurate translations.¹⁰

Here are some statistics regarding hits on the Commission's web site:

FY 11-12: Users visited the web site 62,819 times during the year

FY 11-12: There were 188,184 "pageviews" of the web site

FY 10-11: Users visited the web site 58,086 times during the year

FY 10-11: There were 151,048 "pageviews" of the web site

FY 9-10: Users visited the web site 52,650 times during the year

FY 9-10: There were 138,846 "pageviews" of the web site

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¹⁰ Supervisor Chiu and City Attorney Herrera also recently introduced legislation that would designate the Ethics Commission as a Tier 1 department under the Language Access Ordinance, codified as Chapter 91 of the Administrative Code. Tier 1 departments are required to provide enhanced language access services, such as the use of bilingual employees, automatic translations of key documents, and preparation of an annual compliance plan. Historically, and based on at least one survey that the Commission conducted, the Commission has had no requests for language translation services (with the exception of one witness during the Mirkarimi hearing). In the rare instances where a member of the public visited the Commission and did not speak English, existing staff was able to translate – it turned out in these instances that the member of the public required the services of other departments, to which they were directed. If the Commission is designated a Tier 1 department, Netfile has estimated that it could cost an estimated \$125,000 per year if the City provided the translations and Netfile adds the new language into the existing system; approximately \$5,000 in staff costs would also be needed.



ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

BENEDICT Y. HUR
CHAIRPERSON

JAMIENNE S. STUDLEY
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

DOROTHY S. LIU
COMMISSIONER

CHARLES L. WARD
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

August 12, 2011

The Honorable Katherine Feinstein
President Judge of the Superior Court
400 McAllister Street
Department 206
San Francisco, CA 94102

Dear Judge Feinstein:

The Ethics Commission strives to provide the best quality services possible to the people of San Francisco. To that end, it welcomes constructive criticism from a wide body of sources and thus appreciates the efforts of the Civil Grand Jury (CGJ) for suggesting potential avenues of improvement to the Commission. This letter serves as a response to the report released by the Civil Grand Jury on June 20, 2011. Each finding is addressed in turn.

Finding 1

The CGJ suggests: Recommendation 1.1) using a fixed fine structure or always applying the maximum allowable fine, and Recommendation 1.2) allowing the respondent to request a public hearing if he/she disagrees with the fine. The Commission disagrees with Recommendation 1.1; Recommendation 1.2 reflects current Commission processes that permit a respondent to seek a public hearing.

The Civil Grand Jury suggests a fixed fine structure and the Commission recognizes the appeal such a system may have. However, due to the breadth of reasons that infractions are committed, a fixed fine structure would be generally unfair as it would disallow any consideration of individual circumstances and create unintended consequences much like "zero tolerance" and "three strikes" laws. The Commission believes that the punishment should fit the crime. Under the current process, all negotiated settlement agreements and their attendant proposed fines are sent to the individual Commission members for approval. If more than one Commissioner disapproves of the proposal, it is automatically calendared for a closed-session discussion at a Commission meeting. While the Commission agrees with staff recommendations more often than not, there are times when the Commission redirects staff to further negotiations. Moreover, any respondent who cannot or will not reach a settlement agreement with staff will have his or her case heard in a closed-session probable cause hearing. At the respondent's request, this hearing is made public. After a finding of probable cause, a public hearing on the merits is scheduled. The Commission believes this system is more reasonable than the "one size fits all" approach recommended by the Civil Grand Jury.

The Commission is interested in maintaining consistency in its considerations and achieving balance in its judgments. Rather than using a fixed scheme to resolve cases, the Commission will endeavor to create a fitting set of guidelines that allow fairness, consistency but also needed flexibility.

Finding 2

The CGJ accuses the Ethics Commission of failure to enforce the City's Sunshine Ordinance, and Recommendation 2) states that Sunshine Ordinance Task Force actions should have a timely hearing. The Commission agrees with this finding and adds that it is already endeavoring to meet this goal.

Each referral is taken seriously and reviewed on its merits under the Ethics Commission's Legal Authority. Starting in May 2010, the Ethics Commission formulated several reforms for the handling of Sunshine referrals; it referred these to the Sunshine Ordinance Task Force in August of 2010 in order to clarify those legal obligations. The SOTF issued its response on August 1, 2011. The Ethics Commissioners will review and consider the comments from the SOTF, including comments regarding the review and hearing process, and will adopt those reforms it deems appropriate and productive in the near future.

Finding 3

The CGJ suggests that the Commission not wait for the City Attorney or District Attorney to assert jurisdiction before beginning an investigation: Recommendation 3) suggests beginning investigations immediately upon the close of the 14-day reply window. The Commission agrees with this recommendation. The Investigative Staff, however, needs some discretion in deciding which cases to prioritize based on current circumstances. Additionally, since staff resources are limited, it does not make sense to duplicate the work of other law enforcement agencies. The Commission will endeavor to respond to referrals on a timely basis.

Finding 4

The CGJ believes that the appointment of Ethics Commissioners by elected officials leads to the appearance of impropriety and Recommendation 4) suggests the addition of four Commission members appointed by non-governmental entities. The Commission is neutral on this suggestion.

The Commission believes that it is the behavior of the Commission that reflects its integrity. There is an acknowledged conflict-of-interest in the establishment of the Commission in that it is appointed by members of the elected body of government some of whom in turn provide the Commission's budget. However, the voters chose this process and the Commission is not going to second-guess their wisdom. Indeed, on one occasion the voters rejected an alternative plan to this structure. There are measures in place to address these concerns. For example, Commissioners may serve only one six-year term, reducing the likelihood that they would curry favor to ensure reappointment. They are appointed by an array of officials, not just the Mayor or the Board of Supervisors. Should the voters determine to change the composition of the Commission, the Commission would accept the voters' new choice of commissioner selection.

Finding 5

The CGJ believes that the Executive Director has too much discretion in proposing the dismissal of individual investigations and Recommendation 5) suggests that regulations be amended to require an actual discussion of each recommendation for dismissal and a vote on such recommendations. The Commission will revisit this process and will consider changing this process.

While it may appear to some people that the Executive Director is allowed to dismiss cases, this is not the case. Under the current system, Ethics staff members prepare comprehensive reports for the Commissioners regarding both proposed dismissals and complaint settlements. Commissioners all read these reports and make independent decisions regarding whether to support staff recommendations or to calendar the items for Commission meetings. If more than one Commissioner has concerns about staff recommendations, the item is calendared for closed session discussion at the next Commission meeting.

Finding 6

The CGJ states that the Ethics Commission does not have a database to track issues efficiently and Recommendation 6) suggests creating or modifying a database to track issues efficiently.

The Ethics Commission is concerned that the CGJ had some difficulty in obtaining documents from our staff and will endeavor to improve on this function. Customer service is a high priority for us. When official document requests are presented to the Commission, a single staff member is assigned to log the request, when it arrived and from whom. The log includes the name of staff responsible for responding and when the request was fulfilled. When individual staff members receive document requests, they do not always have them logged into this system and staff will be instructed to ensure that all requests for documents or information are logged properly.

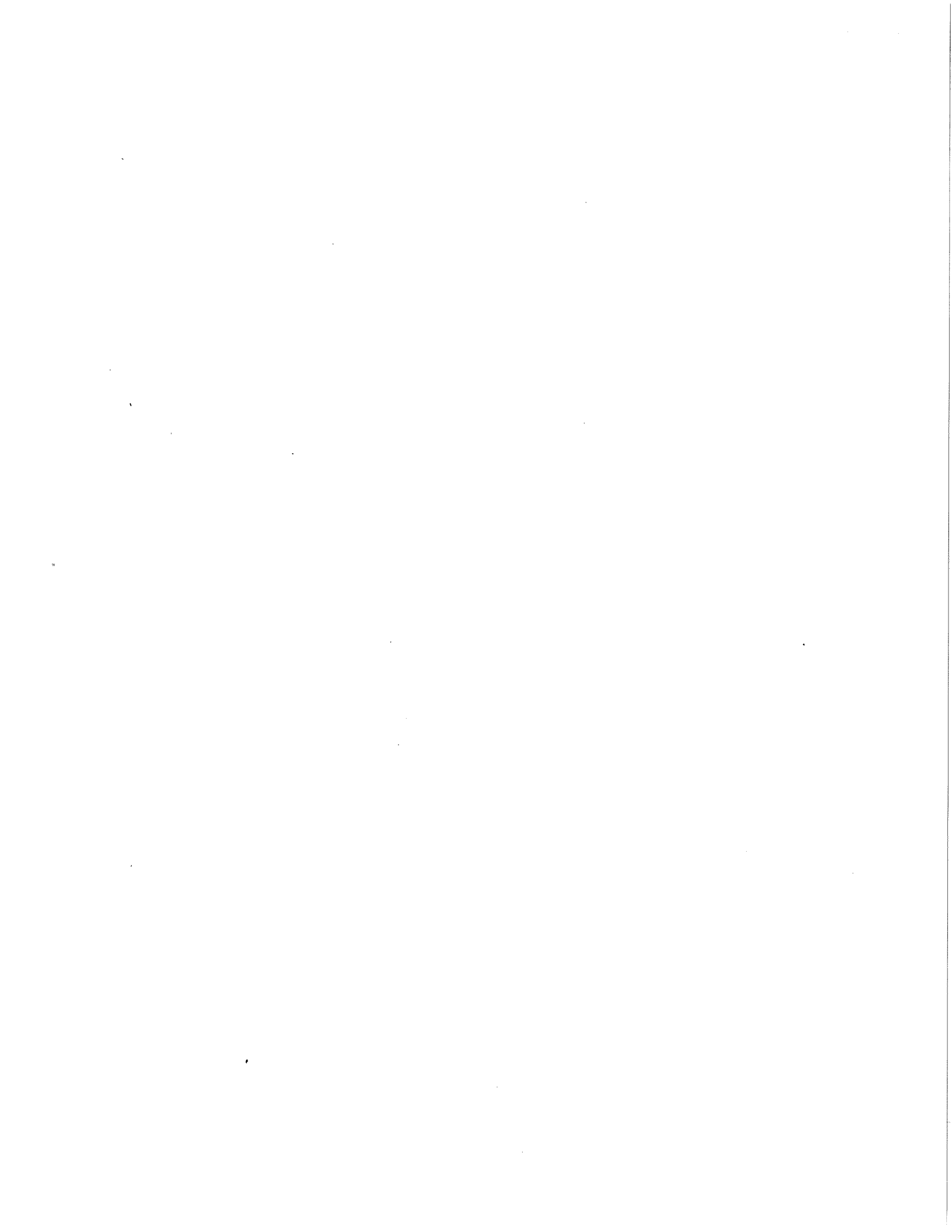
Finding 7

The CGJ suggests that audio recordings of Commission meetings do not provide enough transparency and Recommendation 8) suggests that Commission meetings be televised. The Commission will explore the possibility of televising its meetings in a cost-effective way.

In conclusion, the Ethics Commission would like to recognize the value of the work of the Civil Grand Jury and offer thanks for their input into Commission functions. While the Ethics Commission does not agree with all of the CGJ's findings, it will follow through on those that will help improve services to our community.

Sincerely,

John St. Croix
Executive Director



California Penal Code Section, 933.05 (b), requires the responding party to report for each recommendation of the Civil Grand Jury one of the following actions:

1. Recommendation Implemented - Date Implemented - Summary of Implemented Action	2. Will Be Implemented in the Future - Anticipated Timeframe for Implementation	3. Requires Further Analysis - Explanation - Timeframe (Not to exceed six months from date of publication of Grand Jury report)	4. Will Not Be Implemented: Not Warranted or Not Reasonable - Explanation
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For each recommendation below, indicate one of the four actions you have taken or plan to take in the "Action Plan" column and provide the required explanation in the "2012 Response Text" column.

CGJ Year	Report Title	Recommendation	Response Required Office of the Controller	Action Plan	2012 Response Text
2005-06	2005-06 Continuity Report	1. The tracking document from the Controller's Office, with the addition of the CGJ's findings and recommendations for 2001-2003, should be put online. As a working document, it should be updated as new information becomes available.		Recommended Implemented	The tracking document was put online in November 2006.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	1.1. The Ethics Commissioners should establish a fixed fine structure for violations or apply the maximum allowed fine.	Ethics Commission		Due to the breadth of reasons that infractions are committed, a fixed fine structure would be generally unfair as it would disallow any consideration of individual circumstances and create unintended consequences much like "zero tolerance" and "three strikes" laws. Punishment should fit the crime. This reflects the Commission's long standing process--all negotiated settlement agreements and their attendant proposed fines are sent to each Commission member for approval. If more than one Commissioner disapproves of the the proposal, it is automatically calendared for a closed-session discussion at a Sunshine referral, which it sent to the SOTF in August 2010. The SOTF responded in August 2011; since that time, both the Commission and the SOTF have been trying to establish a date for a joint meeting to discuss these proposals. As of this date, the joint meeting is scheduled for April 13, 2012.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	1.2. If the respondent disagrees with the fine a request may be made for a public hearing. This will allow the commissioners to exercise discretion over the fines process.	Ethics Commission	4: not warranted 1: this recommendation reflects longstanding policy, thus, no	
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	2. All Sunshine Ordinance Task Force enforcement actions deserve a timely hearing by the Ethics Commission.	Ethics Commission	2	The Commission agrees with the recommendation; however, the Commission also believes that its investigative staff needs some discretion in deciding which cases to prioritize based on current circumstances. In addition, because staff resources are limited, it does not make sense to duplicate the work of other law enforcement agencies.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	3. After the 14-day window, Ethics Commission investigations should start promptly.	Ethics Commission	4: not warranted	The Commission is neutral with respect to this recommendation. The voters of San Francisco chose the process that establishes the Commission; the Commission is not going to second-guess their wisdom.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	4. The City Charter should be changed to add four additional commission members appointed by non-partisan community organizations and individuals such as: The League of Women Voters, Society of Professional Journalists, The San Francisco Labor Council, The Bar Association of San Francisco, and the Dean of UC Hastings Law School.	Ethics Commission	4: not within control of the Ethics Commission	Under the current system, Ethics staff prepare comprehensive reports for the Commissions regarding both proposed dismissals and complaint settlements. All Commissioners read these reports and make independent or calendar items for discussion at Commission meetings. If more than one Commissioner has concerns about staff recommendations, then it is calendared for discussion. Staff had been instructed to log document requests into the data system, before the issuance of the Grand Jury report.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	5. The commissioners should amend section VI, A in the Ethics Commission Regulations For investigations and Enforcement Proceedings to require review and a vote on investigations recommended for dismissal.	Ethics Commission		Effective with its January 23, 2012 meeting, the Commission's meetings are televised.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	6. The Ethics Commission staff should create or modify their database to increase search and tracking capabilities.	Ethics Commission	4: not warranted	
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog	7. To maximize transparency, the San Francisco Ethics Commission should broadcast their meetings on the SFGOVTV television network.	Ethics Commission	1	

SAMPLE
RESPONSE

California Penal Code Section, 933.05 (b), requires the responding party to report for each recommendation of the Civil Grand Jury one of the following actions:

1. Recommendation Implemented - Date Implemented - Summary of Implemented Action	2. Will Be Implemented in the Future - Anticipated Timeframe for Implementation	3. Requires Further Analysis - Explanation - Timeframe (Not to exceed six months from date of publication of	4. Will Not Be Implemented: Not Warranted or Not Reasonable - Explanation
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For each recommendation below, indicate one of the four actions you have taken or plan to take in the "Action Plan" column and provide the required explanation in the "2013 Response Text" column.

CGJ Year	Report Title	Recommendation	Response Required	2012 Action Plan	2012 Response Text	2013 Action Plan	2013 Response Text
2005-06	2005-06 Continuity Report	1. The tracking document from the Controller's Office, with the addition of the CGJ's findings and recommendations for 2001-2003, should be put online. As a working document, it should be updated as new information becomes available. 2. All Sunshine Ordinance Task Force enforcement actions deserve a timely hearing by the Ethics Commission.	Office of the Controller	Will Be Implemented in the Future	The tracking document will be put online in July 2011.	Recommendation Implemented	The tracking document was put online in August 2011.
2010-11	San Francisco's Ethics Commission: The Sleeping Watch Dog		Ethics Commission	Will Be Implemented in the Future	In May 2010, the Commission formulated several reforms for the handling of Sunshine referrals, which I sent to the SOTF in August 2010. The SOTF responded in August 2011; since that time, both the Commission and the SOTF have been trying to establish a date for a joint meeting to discuss these proposals. As of this date, the joint meeting is scheduled for April 13, 2012.	Recommendation Implemented	The Ethics Commission adopted regulations to handle Sunshine complaints and SOTF referrals on a timely basis. These regulations took effect on January 29, 2013. The first hearings based on such regulations were held on February 25, 2013.