

From: Oliver Luby <oliverlear@yahoo.com>
To: "mabel.ng@sfgov.org" <mabel.ng@sfgov.org>
Cc: "garrett.chatfield@sfgov.org" <garrett.chatfield@sfgov.org>,
 "catherine.argumedo@sfgov.org" <catherine.argumedo@sfgov.org>,
 "ethics.commission@sfgov.org" <ethics.commission@sfgov.org>

Date: Wednesday, February 27, 2013 10:29PM
Subject: my comments at today's IP meeting

Hi Mabel,

Sending this per your request from earlier today, on my own time and behalf. Thanks again for holding this extra IP meeting on the Budget Analyst report - the extended notice was helpful. It would be great to see some significant study and proposed action done by Ethics regarding these and other proposals for achieving new reform.

Summary of my comments from today:

1. Audio record all future IP meetings, and post audio online, as LA Ethics has done, per need to have government's development of good government practices be completely transparent;
 [Incidentally: I will add now that people can always send you anonymous letters if they don't want to provide their feedback at an audio recorded event. Certain outreach efforts could also be initiated to anonymously solicit feedback from people with input who are afraid to go on the record, such as lobbyists who are aware of loopholes and unregulated or undisclosed lobbying. The feedback obtained from such outreach efforts should of course be published online, but the commentators could be protected that way.]

2. a. There are some findings from the Budget Analyst report that the Discussion Topics in your IP meeting notice mention which SF should adopt.

-SF's contractor contribution ban lasts only 6 months after contract approval; LA's last 12 months & bars not only contributions but fundraising as well

-SF has 2 pre-election filing periods for election campaigns; LA has 3

-SF's supplemental soft money reporting is triggered at \$5,000, doesn't apply to ballot measures, & only applies to candidates if at least 1 has accepted public financing or agreed to an expenditure ceiling; LA's is triggered at \$1,000, does apply to ballot measures, & always applies to every 90 day period before an election

-SF allows candidates 6 months to pay their debts; LA allows less time

-SF permits lobbyists to make campaign contributions; LA does not

2. b. However, for each of these reforms not in SF which SF Ethics has acknowledged LA has, there is a bigger story that the your Notice's Discussion Topics doesn't mention.

-For the *contractor contribution ban*:

#1. Despite the much lauded technology embraces of the City & County *and* Ethics' own commitment to paperless, transparent e-filing, Ethics mgt. continues to refuse to change the 126 Contract disclosure forms (which are the basis for identifying who the contractor contribution ban applies to) from paper to an electronic format;

Ethics won't even post the forms as Excel files, as it already does with certain Public Finance forms – an

Excel form would make it vastly easier to research who prohibited donors are as well facilitate compliance by campaigns & donor alike;

By maintaining the paper format, Ethics makes it more difficult to utilize the data in the forms & also facilitates private, partisan capacities with the data – when I was on staff, a law firm routinely copied the forms for the purpose of creating their own database, giving it a tool unavailable to either clients who couldn't afford them, the press, and even the government; parties without the resources to manually construct their own database are harmed by this system maintained by Ethics;

John St. Croix could on his own authority require these forms in an Excel format this very week at no cost to the City & County;

The reason Ethics requires certain public finance forms in an Excel format is because that makes utilizing the forms much easier on the Ethics audit staff; therefore, it is reasonable to assume that Ethics leadership's retention of the paper format for contract disclosure stems from a disinterest in promoting utilization of the disclosures.

#2 w/ the contractor ban. LA's campaign contractor ban has other advantages over SF's beyond those identified by the Budget Analyst report:

a. the contractors themselves must submit the contract disclosure form when first bidding on the contract, thereby capturing the negotiating period which is also covered by the contribution ban (in SF, contributions are also prohibited during the negotiation period, but the public is left on their own to try to figure out when the period actually occurs)

b. Contractors who violate any of the campaign finance rules related to contracting are subject to contract eligibility debarment – SF has no such procedure in the CFRO.

c. LA's definition of contract is broader than SF's, including non-regulatory permits and land use licenses and concessions

-Regarding LA's *extra pre-election reporting period*:

The SF Ethics IP notice takes some time to explain an error in the Budget Analyst report on this issue and notes that the LA's extra period occurs after the usual 2nd Pre-election period – but when it comes to where SF needs extra disclosure, the real story is the August deadline for registering for the ballot and the 11th hour candidates who take advantage of that deadline to surprise the public with their candidacy; when candidates announce their candidacy that way, we get no disclosure of their campaign finances until the First Pre-election deadline, which is usually in early October – another pre-election deadline is needed in the middle of the current First Pre-election period to take into account the August registration deadline. [Post meeting note: State law changes may obviate the need for this suggested reform.]

-Regarding SF's *supplemental soft money disclosures*:

The IP notice omits the fact that the soft money disclosures in non-Board or Mayor contests when someone has agreed to the Expenditure Ceiling *stop* after the Ceiling is lifted;

While the IP notice takes pains to note that SF's supplemental reporting also applies to member & electioneering communications & certain other activities, it doesn't require previously undisclosed contributor reporting or payee information except under limited circumstances;

[Post meeting note: Because of the need to receive copies of the actual soft money communications themselves and disclosures not provided by the Form 496, I do not think SF should rely exclusively on the new state enhancement regarding IE disclosure during the 90 period before the election.]

-Regarding *the accrued debt limitations*:

SF Ethics has been on notice for some time that non-candidate campaigns, for which the debt time limit rules don't apply, are capable of concealing their donors by reporting campaign debt in advance of raising the funds to pay the debt; SF Ethics has never proposed any solutions for this problem

-Regarding *LA ban on contributions from lobbyists*:

LA's lobbyist laws present numerous advantages over the SF rules regarding lobbyists. Primarily, the SF law offers far less disclosure than it should, as numerous press stories about influence peddling can demonstrate. The Budget Analyst report only scrapes the surface of the benefits of LA law over SF. Other jurisdictions, including LA, San Diego, San Jose, the State, and more offer examples of reform that SF doesn't have. This is such a lengthy and detailed area, and there are so many problems with SF law, that I'm not going to outline all the issues here. I will simply state that SF Ethics has failed to monitor and utilize model laws and the reforms of comparative jurisdictions to promote both disclosure of lobbying and ethical interactions between influence peddling and government.

3. In addition to the Budget Analyst finding that the Ethics IP notice mentions, the Ethics IP notice flat out ignores numerous findings in the Budget Analyst report regarding reforms that LA has but SF lacks:

For example:

-The costs of compliance with campaign regulations count as qualified expenditures in LA (for expenditure ceiling purposes), but certain costs are not considered qualified expenditures in SF

-LA has a lower bar than SF for disclaimer requirements on robo-calls

-LA limits **all** of its local committees to a max. of \$25 for cash contributions; for any committee in SF (other than those for candidates accepting public financing), the limit is the state standard of \$99

-In LA, City Commissioners may not fundraise for candidates

-LA provides limits on the amount of contributions that candidates may accept from independent expenditure entities, as a condition of accepting public financing or agreeing to an expenditure ceiling

-LA provides a Guide for Contributors, while SF does not;

- The Budget Analyst report notes that ethics penalties in LA can be enforced by private citizen actions;

- According to the Budget Analyst report, LA explicitly provides for the removal of individuals from office if they are convicted of a misdemeanor that has a material impact on the outcome of the election;

-LA posts its stipulated settlements, decisions, and orders regarding its cases going back to 1993, while SF only posts going back to October of 2004

[Unmentioned by the Budget Analyst is that LA also posts the names of the Respondents prominently in a list, whereas you can only learn the names with the SF violators by individually opening their PDFs]

4. Enforcement –

The Enforcement program of SF Ethics has had numerous problems over years and, due to its confidentiality provisions, has largely been shielded from public oversight. As far as I am aware, the

proper justifications for investigative confidentiality are limited to protection of witnesses and unique investigatory methods [Post meeting note: Other justifications would be preserving the integrity of the investigative process during the course of the investigation, including avoiding interference and destruction of evidence]. The effect of confidentiality, especially after cases are closed, should not be to conceal government decision making from public oversight. The program and its history needs to be audited by a budgeted, independent expert authority. In addition, Charter reform should be proposed to provide for enhanced transparency and public oversight of Ethics Enforcement. Until these things happen and major reforms are put in place, SF Ethics Enforcement will remain permanently suspect in the public eye.

[Note: See San Diego ethics laws regarding closed cases, for a starting point.]

5. Contribution limits-

I do not support adopting the higher LA contribution limits detailed in the Budget Analyst report. Since last year, I noticed that the Budget Analyst reform appears to have generated some appetite for raising SF's individual contribution limits, given that LA has higher individual contribution limits. Raising contribution interests has been the fantasy of many in the election campaign business for some time. However, the Budget Analyst report's contrast between SF and LA's limits fails to take into account their relative registered voter populations, especially in conjunction with the number of donors required to reach the expenditure ceiling. The Budget Analyst does utilize the number of registered voters to contrast the expenditure ceilings between the two jurisdictions, but the contribution limits are only given a flat comparison, which is not a very robust analysis of the appropriateness of the limits.

In addition, the Budget Analyst analysis fails to take into account the larger geographic area of LA, which can result in increased communication and outreach costs for campaigns.

So, before we make the mistake again of getting carried away with incompletely vetted proposals, let's make sure that contribution limits are thoroughly studied before any proposals move even an inch from the drawing board.

Additional post meeting notes:

In addition to these reform proposals, there are number of others that have been raised by Friends of Ethics in recent years. For example:

<http://www.citireport.com/2012/10/a-primer-for-closing-%E2%80%9Csoft-money%E2%80%9D-disclosure-loopholes-in-san-francisco-2/>

Additionally, there are many model laws and current reforms existing in comparative jurisdictions which SF could model. SF Ethics should institutionalize staying on top of good government reform and comparative law throughout the country, as well as generously seek out and consider the published proposals of reform advocacy groups such as Friends of Ethics & others, and should adopt and demonstrate the very best practices that exist via a thoroughly transparent legislative development process.

I also am in agreement with Larry Bush's comments made at the meeting about the need to study problems with bundler disclosure (and Commissioners and other special sources engaging in such bundling) and the nexus between contributions, lobbying, and land use decisions.

Good luck.

Oliver Luby

IP Meeting 02/27/13

Eileen Hansen

Comments

(revised following the meeting)

Recording of Meeting

I very much appreciate the convening of this IP meeting, and I appreciate the presence of Commissioner Renne. I asked for the meeting to be recorded, both prior to the meeting and at the beginning of the meeting, but unfortunately no recording was made. In the future, I would ask that all IP meetings be recorded. When I was on the EC I found it most useful to hear directly from the public – and then to share that info with the Commission. Without a recording or official notes, it is difficult for the Commission to fully grasp the comments made, and whether they have come from the public or the regulated community. It is critical to know who is assisting the staff in their development of new proposals and the specific comments made by those in attendance.

Outreach Needed

I am a member of Friends of Ethics and we specifically asked for this third IP meeting because we were concerned with the extremely limited outreach that was done for previous meetings, resulting in very few individuals from the non-regulated community in attendance – and thus skewing the information received by staff. We did not see increased outreach for this meeting – and so FOE did its own outreach. The result was that nearly everyone who attended this IP meeting was there because of the outreach we did. Supervisor Campos, at the public hearing last year in response to the Rose Report, and the Commission itself, asked for increased outreach – and I again ask that the Commission do so in the future. When I was on the Commission and asked for increased outreach I was told to do it myself if I thought it was important. I'd like to think we've moved beyond that, but it doesn't appear so.

Requests

1) There are a number of items listed for discussion on today's agenda. However, there are also many not listed. My first request of the Commissioners and Staff is that the ENTIRE Rose Report be calendared for discussion at an upcoming Commission meeting, not just a few items. The items listed are indeed important and are those noted in the Executive Summary of the Rose Report. However, they are just the beginning and I would hate to believe that the full report is not reviewed and discussed.

The Rose Report was issued in June 2012. Why has it not been addressed except at IP meetings? I found it quite a compelling report and yet, I don't see a corresponding response from the Commission. It appears to me – and I must believe to members of the public – that the Commission has not taken it seriously.

It reminds me of the Civil Grand Jury Report in which the EC was called SF's Sleeping Watchdog. In that report, the CGJ said this: "there are a number of areas where the procedures and rules followed by the EC staff are at odds with its stated mission to practice and promote the highest standards of ethical behavior in government." For example, they cited a number of reduced fines and pointed out a fine that was reduced to just 1% of the original fine. The CGJ said the reduction of fines due to cooperation is "most irregular and vulnerable to manipulation against the public interest." There was a bit of a public buzz when the report was released, but as far as I know there was no response from the Commission.

2) Has the CGJ Report been addressed yet? Have their recommendations, including setting a fixed fine structure for violations or applying the maximum allowed fine been considered yet? If not, why not? This is troubling – and

if I was still on the EC, I would be troubled at the inaction and lack of attention to public feedback. The EC is responsible to the public and yet, when there is an opportunity to call attention to the importance of ethics issues – and you have the public’s attention – you are silent.

The Rose Report highlights numerous areas where LA has stronger transparency, accountability and enforcement than SF. I’d like to believe that our cutting edge city is on the forefront of ethics reform, but this report clearly tells us it’s not so. Even the State has some best practices that we don’t have in SF – and FOE asked a representative from CA Common Cause to share that information with you today. We all know that ethics reform is broken at the federal level. If the City of SF can’t push the envelope and help set the bar for progressive ethics reform in the country, who can? Apparently, LA can.

3) The Rose Report was limited in its scope by comparing LA and SF. It makes sense to me that the EC would want to investigate further – there are a number of areas cited by Harvey Rose that merit further research. And, there are other cities that merit research. Don’t we want to do the very best we can in terms of best practices? We can learn these from other jurisdictions. When I was on the EC, I repeatedly heard that our EC couldn’t do something because we were afraid of getting sued. Well, let’s at least start where other jurisdictions have laws and rules in place and have not been challenged for them. Then, let’s move on to being brave enough – and smart enough in our assessments – that we can carefully and strategically move ethics reform forward by testing the law. Would you be willing to do that?

It would be easy for me to go down today’s agenda and say YES, of course we should increase the period during which contractors, etc. may not contribute to political campaigns; and YES, of course we should explicitly prohibit political contributions from registered lobbyists – the State of CA does; why shouldn’t we? – and so on. But, that’s too easy and in some ways, skates over some other critical concerns. Let’s look at what’s not on the agenda:

Some low-hanging fruit:

4) Why shouldn’t we ban contributions from political appointees to those who appointed them?

5) Why should we allow political contributions to be exchanged inside City Hall?

6) Why should we allow the collecting and bundling of contributions from others?

We’ve seen recent incidents and the public knows these are problems, but what are we doing about them? This is how influence is carried out – and how politics and policy are made. Is there anyone in this room who doesn’t believe that?

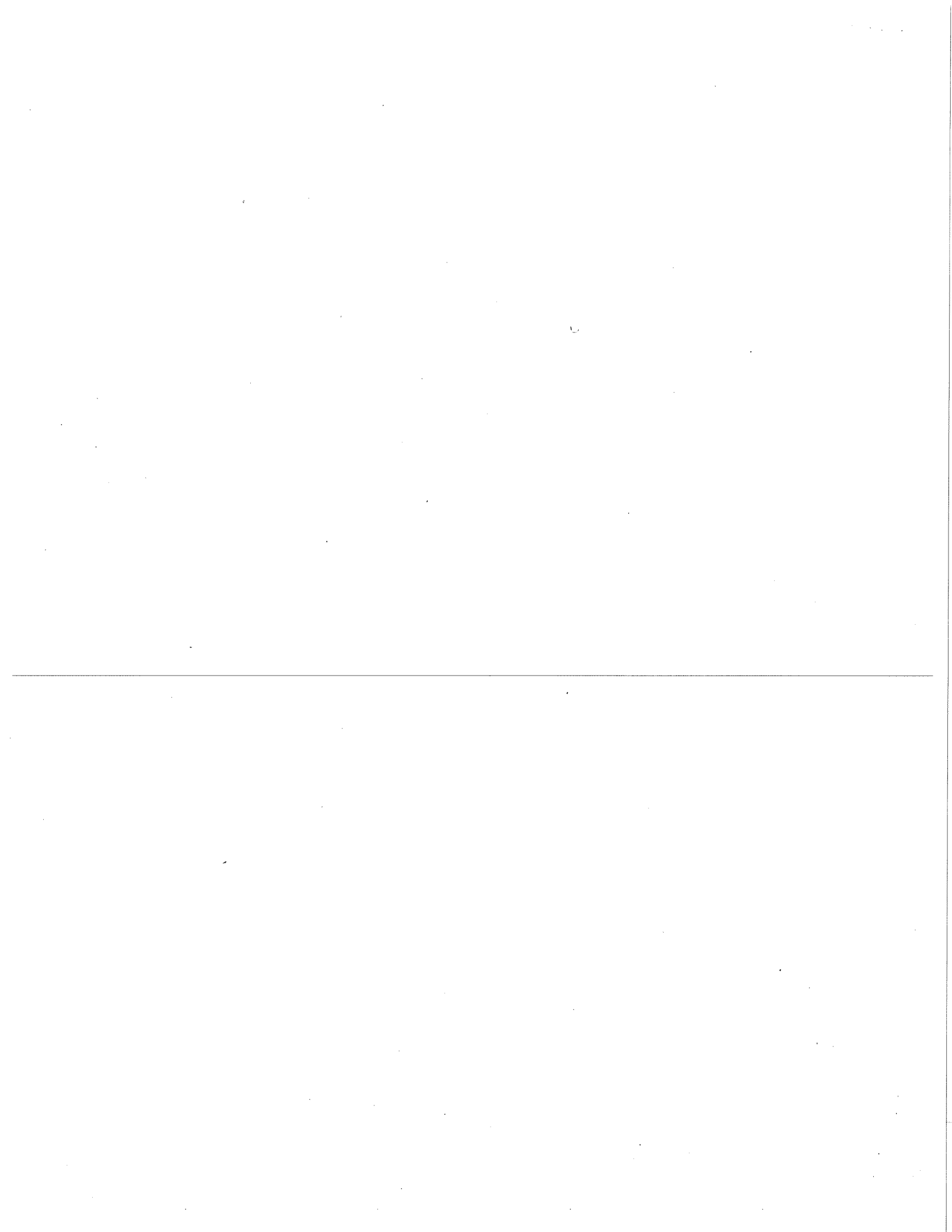
7) With just a bit of research, here’s a specific example – but again, one has to be pro-active and strategic and focus on protecting the public and following the money to get this information – and then to figure out what to do about it. The following public information is available in the 2012 SF Lobbyist Activity for Political Contributions: Janan New, an active registered lobbyist and ED of the SF Apartment Association, gave her \$500 to Mike Garcia for D7 Supervisor and then gave \$35,170 to Friends and Neighbors in support of Mike Garcia. How is this possible? While there is a cap of \$500 on contributions to candidates for mayor and the BOS in SF, there is no cap on contributions to those same candidates running for the DCCC or to committees set up to support those same candidates. Doesn’t this bear looking at?

8) Development is the name of the game in SF; its money drives our politics and our decisions about what kind of city we are going to live in. We are currently in a wild development boom – 90% of all CH lobbying is development-related. The city contractors contributions ban has an enormous loophole: it is nearly meaningless

without a ban on contributions from those seeking development permits. Again, some pro-active research gives us those figures. But the public shouldn't have to do that research – that is the job of the EC. Uncovering that information is what I want my EC to be engaged in. Would you agree that following the money in SF politics will give us far more information than tinkering around the edges of existing laws? There is no one but the EC to do this work; will you take it on?

Thank you, Ethics Commissioners and Staff. I appreciate your taking my comments into consideration as you proceed. I am always happy to be available should you desire more information.

Eileen Hansen
Former Ethics Commissioner



From
Larry Bush

ETHICS FEB 27, 2013

I want to take a step back in looking at the larger issue the underlies the LA approach compares to ours.

LA's laws and enforcement are focused on pay-to-play politics which they do through several features: banning lobbyist contributions, banning contractors from bundling, banning city commissioners from fundraising for candidates other than themselves, setting out a clear guide on contributor rules. These are all gates that either open or close for how money plays at city hall.

San Francisco should look at the same larger issue, not just piece off the various provisions as today's agenda does. It needs to ask what are we doing, how is money playing in our politics, and what steps should we take -- from prohibitions to much stronger disclosures.

By taking this higher level view, it allows us to consider the Mayor Ed Lee Committee for San Francisco that skirts the law by establishing a General Purpose Committee that accepts unlimited contributions as well as money from contractors because it is not a candidate committee, even though it is controlled by the mayor.

Similarly, the Commission now requires filing by committees seeking to draft a candidate, but did not act on the proposal we made that the disclosures indicate whether the donor is a city contractor or has business pending before city officials.

This is the illusion of transparency and not genuine transparency.

It allows us to consider the impact of city contractors responding to requests from city officials to make contributions to nonprofits under "behested payments" and these contributions presumably result in favorable status for the official.

Some of those involved include city contractors and in one case was a contribution of \$100,000. There is no identification that the donors are city contractors or that they obtain favorable votes on their projects.

Then I am looking at committees funded by nonprofits that do not disclose their donors, and examining whether some of this is "dark money" hidden from public view similar to the funds the FPCC is trying to track.

The Parks Alliance is my prime example with contributions to the Parks bond that exceed \$100,000 but from mystery sources. Further, they have failed to meet their reporting requirements thus deepening the mystery. We have no reports after October 21 from them -- which is of course a crucial period for campaign spending.

Finally, i am looking at how staff is unfamiliar with the real world of politics and fails to take into account how the flow of money works. A prime example is setting a \$5,000 figure for disclosing robocall expenditures, but as we in FOE know, \$1,000 is enough to flood a district election and it would all be hidden under the staff's rule that was adopted by the commission.

In my opinion, this shows that the commissioners need to seek input beyond the staff and do so actively and not simply on the basis of who shows up to speak.

I think this is the framework for a meaningful discussion of Los Angeles' policies and practices as a possible model for San Francisco.

Clearly when you get into the specifics, there are any number of gaps that San Francisco has not closed and that are being used as loopholes.

We do not prohibit contractors from bundling contributions from others, and this is precisely the power lever for City Hall influence.

We do not include those seeking development permits in our definition of contractors, yet they are the category with the largest number of City Hall contacts.

We have not established performance standards for ensuring that filed reports are audited or even posted for the public.

In the past several months, we have seen complaints filed where there has been a serious failure to provide oversight on these reports.

The Commission has not adopted a policy of filing a public charge that a violation has taken place, but relies solely on complaints being filed. If you had a system for filing a public charge as LA does, you could have taken up issues that surfaced in your review this week of Sunshine violations but which were not appropriate under the specific section of the law cited in the complaint and finding.

February 27, 2013

President Benedict Hur
Commissioner Jamiene Studley
Commissioner Dorothy Liu
Commissioner Beverly Hayon
Commissioner Paul Renne
San Francisco Ethics Commission
25 Van Ness Avenue, Suite 200
San Francisco, CA 94102

President Hur and Members of the Commission:

We are writing to bring to your attention our continued disappointment with the Ethics Commission's work to protect the public trust. We had hoped that the 2011 Civil Grand Jury report and this year's Board Budget Analyst review would bring a renewed vigor and commitment to the mission of the Ethics Commission.

We write from the perspective of many different organizations and communities active in our city's public life. Some of our organizations are active in city elections and some are active as advocates for steps we believe will improve the quality of life and government for all of us regardless of our political differences.

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.

~~Within memory, Ethics staff has yet to seek public input on how the Commission is meeting its~~
mandate or to hear from us our proposals on steps that are long overdue. We note that even when members of the Board or a state judge recommended action by Ethics to protect the public trust, Ethics staff did not act. This significantly impacts our confidence in the Commission and its oversight.

Now with the upcoming Interested Persons meeting, the IP notice of the report eliminates significant findings in the Rose Report from the topics on its agenda. We plan to raise those issues either at the meeting or in a separate communication to the Commissioners.

We draw your attention to these specific findings in the Rose Report that were eliminated from the IP discussion topics:

- Los Angeles provides greater disclosure of contributors to soft money spenders, something that is at the heart of the current FPPC effort to determine the contributors hidden from public view in the last state election. San Francisco's system shields these donors from public view.
- Los Angeles provides a Guide for Contributors that makes clear to everyone what the rules are for making donations. We strongly support this, but San Francisco does not provide such a Guide and it is not mentioned in the IP discussion topics.
- Los Angeles allows private citizen suits to enforce penalties. San Francisco does not. Yet this one step would address many of the tensions that surround the Ethics Commission's lackluster enforcement record.
- Los Angeles requires committees making robocalls to voters to disclose their funding sources and provides a reasonable threshold for when disclosures must be made. San Francisco arbitrarily sets a high bar that results in many campaigns being able to avoid making these disclosures.

- Los Angeles prohibits city commissioners from fundraising for other candidates. In San Francisco, city commissioners are the lifeblood of pay-to-play style politics as donors cultivate those contacts for their own interests.
- Los Angeles limits the amount of contributions that candidates may accept from independent expenditure committees if the candidate accepts public financing or agrees to the expenditure ceiling.

We draw your attention to key differences in what LA is doing vs what SF is doing:

- LA bans political contributions from registered lobbyists. So does the State of California. Why doesn't SF?
- LA regards attorneys who give political advice – even if they aren't actually lobbying city officials – as lobbyists who must register and report their activities. We don't.
- LA bans contributions from political appointees to those who appoint them (this is the key ingredient in the money machine of SF pay-to-play as City Commissioners pour money into the mayor's re-election or various committees). Why doesn't SF?
- SF prohibits contractors from making contributions to officials who will decide on their contracts, but leaves open the loophole that allows these same contractors to fundraise for the officials who will make the decisions on their development permits. The great majority of City Hall lobbying is development-related – shouldn't this be addressed?
- SF has another loophole in pay-to-play politics: we ban contributions from those seeking City Hall favors, but we don't ban them from collecting and bundling contributions from others. That's where the real influence is felt.
- SF allows officials to accept political contributions right in City Hall and in City buildings; LA doesn't. Checks can be handed to officials right in the Board chambers or behind closed doors in the Mayor's Office. The State of California bans the acceptance of political contributions in the Capitol. Why doesn't SF?
- LA has a much higher enforcement rate than SF – Harvey Rose found that SF dismisses 76 percent of all cases compared to 19 percent in LA.

As noted above, not only is LA ahead of SF in numerous policy areas, the State of California has adopted a number of reforms as best practices, leaving San Francisco far behind and belying any presumed role as a leader in ethics reform. The Rose Report and the Ethics staff's handling of this issue illustrate our concerns about the general direction and effectiveness of the Commission, and exemplify a dramatic lack of due diligence in ensuring that the SF public is informed about the role of money in politics. We are troubled that San Francisco relies on an Ethics staff that has no known experience in San Francisco campaigns. Without some experience in the real world of politics, San Francisco has constructed a paper house of cards that collapses when it confronts the reality of how politics operates in our city. The Rose Report offers a critical opportunity for action and reform leading to more transparency, fuller accountability and stronger enforcement. We implore the Ethics Commission to review the well-researched Rose Report and develop a package of ethics reforms that will enable SF to assume a new leadership role.

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.

We recommend that the Commission members themselves participate in an Interested Persons meeting, that the Commission solicit from the community issues that have yet to be addressed, and that the Commission adopt Ethics Commission-specific performance standards for the Executive Director and the Commission's work that are subject to public comment.

We recommend that the Commission seriously address the Rose Report – now nearly nine months old and still without any attention.

We recommend that the Commission set deadlines for staff implementation of all materials that the law requires be publicly disclosed. It should be noted that the legal requirement of consultant filings by December 15 did not result in public posting of the filings but merely a statement from the Executive Director that the filings would be posted "in due time." Six weeks later, at the end of January, those filings still were not posted, and the public was told to come to the Ethics office to review them.

We believe the Ethics Commission has adopted a passive posture. It has no outreach beyond the groups that themselves contacted Ethics.

Most importantly, there is no discussion of the shifting political landscape that affects the flow of money toward officials who make decisions for the public.

For example, in 2012 a new committee was formed called the Mayor Ed Lee Committee for San Francisco that raised \$400,000, much of it in contributions of over \$25,000 and from those with a financial interest in City Hall decisions. This is legally permitted but avoids the generally understood limits of \$500 contributions and a ban on city contractors regarding committees controlled by elected officials or candidates. By opening this door, we can foresee a time when every city supervisor and official will have their own "general purpose" committee that provides a work-around on campaign contribution limits and sources of contributions. This is an issue that should be a topic for the Ethics Commission.

We fear that the effect is to treat ethics as a political country club, operated for the convenience of staff and the regulated community rather than the public, and that is deferential to the regulated community rather than to its public obligations.

We do not come to this belief easily, and only after repeated instances of the Ethics Commission's reviews by the Civil Grand Jury and others showing that it is not succeeding in its mission.

We have in common a fundamental belief that any progress depends in large measure on transparency in public decisions and the influences brought to bear on decisions, in conjunction with accountability for those decisions and an open process. In our view, this is the most significant responsibility of the city's Ethics Commission, and it is not succeeding.

We respectfully recommend that the Commissioners adopt a posture that leads us into a future that more fully protects the public trust and rejects the passive approach of recent years. Signatories to this letter remain available to discuss these issues.

Respectfully,

Eileen Hansen, Former Ethics Commissioner, Friends of Ethics
Paul Melbostad, Former Ethics Commissioner, Friends of Ethics
Bob Planthold Former Ethics Commissioner; Friends of Ethics

Aaron Peskin, Former President, SF Board of Supervisors; Friends of Ethics
Oliver Luby, Former Ethics Commission Staff; Friends of Ethics
Charles Marsteller, Past Coordinator, SF Common Cause; Friends of Ethics
Karen Babbitt, Community Activist; Friends of Ethics
Larry Bush, Publisher, CitiReport; Friends of Ethics
Marc Salomon, Community Activist; Friends of Ethics
Judy Berkowitz, Coalition for San Francisco Neighborhoods*
Jennifer Clary, San Francisco Tomorrow*
Hulda Garfulo, Former Member, Civil Grand Jury, 2010-2011
Hal Smith, Former Member, Civil Grand Jury, 2010-2011
Richard Knee, Former Member, Sunshine Ordinance Task Force*
Tom Temprano, President, Harvey Milk L/G/B/T Democratic Club*
Bernal Heights Democratic Club
Sierra Club San Francisco Group
and others pending

(for identification purposes only)*

From: LARRY BUSH <sfwtrail@me.com>
To: Mabel Ng <Mabel.Ng@sfgov.org>, "John St. Croix" <john.st.croix@sfgov.org>, Jamiene Studley <jstudley@publicadvocates.org>, "Benedict Y. Hur" <bhur@kvn.com>

Date: Tuesday, December 04, 2012 12:54PM
Subject: Protest Re: IP meeting on Rose Report

Would you also please see that this letter is forward today to each of the commissioners?

Thank you.

Larry Bush

To the Ethics Commission and Staff:

Friends of Ethics is writing with objections and protests regarding the upcoming "Interested Persons" meetings scheduled for December 4 and 10, 2012.

The Commission notified "Candidates, Treasurers and Interested Persons" of meetings "to discuss recommendations of the Budget Analyst report (also known as the Harvey Rose report) comparing programs of the San Francisco Ethics Commission with those of the Los Angeles Ethics Commission."

The notice was dated November 28, providing only three business days before the first meeting will take place.

The Friends of Ethics bases its protest and objections on the following facts, and by this memo, formally requests that Ethics postpone these meetings until February.

* The proposed Interested Persons meetings do not mention inclusion of a representative from the Board Budget Analyst office to present their report and to discuss its findings. Without their direct involvement, as well as the invited presence of Supervisor Campos who requested the Rose report, the Interested Persons meeting will have only the staff's views of the report as a basis for discussion. We believe this fails to provide the direct interaction and communication that should be part of this process.

- Ethics was requested by the Board of Supervisors to conduct robust and inclusive outreach to all participants in San Francisco's political life. Ethics provided Friends of Ethics with the list used to contact Interested Persons about this meeting. We believe the list provided is not an adequate outreach, includes no community-based organizations active in electoral politics, any of the chartered Democratic clubs or other partisan political organizations, or special focus organizations active in San

Francisco elections. We believe the lack of an inclusive outreach as evidenced by this list denies the Commission of a full discussion of the issues and is weighted toward the regulated community. We are puzzled by the fact that many people who do receive the Interested Persons notices are not on the list provided by Ethics, and seek a clarification on whether additional lists were used that were not disclosed to us. We also note that the late Joe Lynn, while the Campaign Finance Officer for Ethics, not only conducted extensive outreaches for IP meetings, including contacting past treasurers and press and posting notices on local political blogs and chat boards, but also later informed Director St. Croix in writing about those practices for the purpose of encouraging the continuation of such outreach. Unfortunately, those practices were not adopted by Director St. Croix

- Ethics provided insufficient time for a review and analysis of recommendations that are significant and meaningful for the operation and success of the Ethics Commission mission. We believe that Ethics has done the bare minimum of notice of a public meeting and failed to take a serious approach to this important issue. Providing notice three days before the meeting, particularly in the holiday period between Thanksgiving and the first of December, means that no organization has an opportunity to place this issue on their agenda for a discussion or to endorse comments to be provided to the Ethics Commission.
- Ethics prepared an agenda that omitted significant and critically important comparisons between the Los Angeles and San Francisco Ethics Commissions that were included in the Rose report. While Ethics did list specific recommendations from the Rose report, the report itself detailed a number of additional differences that are significant to the San Francisco political community as we know it, and that should be part of a discussion of the Rose report.

Among the omitted points are:

- Los Angeles has a private right of action for citizens to act when Ethics does not; in Los Angeles this can include penalties under a civil action. San Francisco has no such provision. We believe this is essential to meaningfully empower citizens to directly seek compliance with our laws.
- Los Angeles requires disclosure of contributors of \$100 or more to groups making “third party” expenditures. San Francisco does not require public disclosure of this money stream. Disclosure of donors to third party committees would add transparency, particularly if this has become a strategy to allow city contractors to influence elections.
- Los Angeles prohibits contributions from those seeking permits, while San Francisco does not. Friends of Ethics has determined that over 90 percent of all City Hall

lobbying involves permit decisions.

- Los Angeles prohibits commissioners from fundraising for candidates, while San Francisco does not. This is the heart of pay-to-play politics that infects city appointments as commissioners are often the first stop for fundraising on behalf of city elected officials. We note a recent case where a city commissioner hosted a fundraiser that included contributions from city employees from the same department. The candidate returned the contributions, recognizing that commissioners are prohibited from seeking contributions from city employees. However, this demonstrates the potential abuse and underscores that Los Angeles' policy is a stronger and more easily enforced prohibition. We recommend it.
- Los Angeles prohibits fundraising from city contractors and those seeking city actions. San Francisco allows contractors to fundraise and serve on candidate finance committees, although they may not contribute their own funds. Currently San Francisco also does not require candidates to disclose the names of their Finance Committee members. However, we strongly prefer closing the loophole, as Los Angeles has done, by prohibiting city contractors and permit seekers from fundraising.
- Los Angeles requires a more robust disclosure of "paid by" notification on telephone messages when 200 or more people are called. San Francisco sets the threshold at 500 people. Therefore, "paid by" calls to members of political clubs during the endorsement process would be missed under San Francisco's standard but included under LA's standard.
- Los Angeles provides a "Guide for Contributors" that educates donors and reduces confusion on such issues as aggregate contribution limits, prohibitions on officers of organizations receiving city funds, and so forth. This is done at minimal cost and made available on the Internet with no printing or mailing costs. San Francisco does not provide a Guide. Instead, the Ethics staff has recommended that the Commission rewrite the law to overturn specific prohibitions, stating that contributors are confused about the rules. The best approach is Los Angeles, where an educational outreach to contributors is part of their program. We note that San Francisco provides guides and outreach to most others involved in political activities, including committee treasurers, candidates and others but does not include an educational outreach to donors.
- Los Angeles prohibits political contributions from being made at City Hall or other city offices, including offices rented with city funds. San Francisco allows contributions to take place in the mayor's own office, supervisor's offices, at Redevelopment, Planning, Port or other offices – in short, anywhere that a donor chooses to make a contribution. We believe allowing contributions to be made in the workplace of city officials undermines public confidence and is inconsistent with other restrictions on the use of city resources for political purposes.

- Los Angeles has a more robust view of what constitutes lobbying and includes attorneys who offer strategic advice even if they do not directly contact a city official. San Francisco does not require registering or disclosing clients from such attorneys involved in orchestrating a favorable result for a paying client. Attorneys who serve as committee treasurers also do not face the same level of public disclosure as lobbyists.

We believe this list of omitted topics, coupled with the unacceptable short timeframe provided for analysis and review by the political community, and the failure to provide adequate outreach, raises serious concerns that Ethics is not engaged in a serious effort to obtain the public's views on its operations and policies based on the Harvey Rose report.

We further note that Ethics has not provided a public schedule of when it will complete a summary of the Interested Persons meeting and comments, or a schedule for consideration by the full Commission of any recommendations.

In addition, Friends of Ethics requests that the San Francisco Ethics Commission audio record the IP meetings regarding the Rose report and post the recordings on its website, as is done by the Los Angeles City Ethics Commission. In the past, the San Francisco Ethics Commission made audio recordings of its IP meetings, though they were not posted online. The Commission's Directors later discontinued the audio recording altogether, which may have been motivated by valuing the privacy of attendees over public transparency. Given that the Rose report IP meetings are about comparing San Francisco's good government laws with Los Angeles' to consider adopting improvements offered by Los Angeles, Friends of Ethics believes that the first improvement that San Francisco should adopt is the Los Angeles set of standard practices for conducting IP meetings. When it comes to the development of good government law and policy, the public's right to know is paramount. Therefore, Friends of Ethics requests that all future IP meetings held by the San Francisco Ethics Commission be audio recorded and the recordings promptly posted online.

Our reasons for requesting a specific timetable for next steps is based on our observation of lengthy delays in staff action on issues even when raised by the Commission itself. We believe the political community will be unlikely to participate in a process that has no specific and public timetable for action but that could take more than a year to reappear.

For example:

- In July 2011, the Ethics Commission requested that staff draft proposals to close the loophole that allows committees seeking to draft a candidate to fall outside the normal reporting and disclosure requirements. However, staff did not produce a proposal until November 2012, 16 months later, and did so without an Interested Persons meeting to discuss their proposal.
- Also at the July 2011 meeting, the Ethics Commission requested that staff examine the loophole that prevented the Commission from acting in cases of Official Misconduct

by a commissioner. Ethics staff still has not produced a proposal to close that loophole.

- Also in 2011, a Superior Court judge suggested that San Francisco adopt a policy prohibiting commissioners from recommending a specific lobbyist to parties seeking a contract or other decision from that commission. Ethics has not prepared any response to that suggestion.
- In June 2012, Rules Committee Chair Jane Kim requested that the Ethics Commission provide some information on the city's Ethics laws in languages other than English, noting that the rules are as important to donors and committees as they are to the public. The Ethics Commission has taken no steps, including in the election just concluded.

Given this record, we believe that any public process to examine the Harvey Rose Report and build new recommendations must include proposed timelines for action if there is to be public confidence that this process is meaningful.

We also strongly recommend that the Ethics Commission set aside time to allow a full discussion before the Commission itself. We believe that such a discussion should not place a two-minute limit on public members making comments.

For the above reasons and cited facts, Friends of Ethics requests that the Interested Persons meeting on the Harvey Rose Report be postponed until February when the political community will have an opportunity to evaluate the proposals and endorse changes, that the Commission immediately engage in a more robust outreach effort that extends beyond the list provided by Ethics to us, that the conversation be broadened to include all topics of comparison between Los Angeles and San Francisco, and that a proposed timeline for a record of the Interested Persons meeting and action by the Commission be provided.

We submit this protest respectfully and with support for the work of the Commission and specifically for the thorough review of any steps that can improve the Commission and public confidence in our political process.

Signed:

Eileen Hansen, former Ethics Commissioner

Bob Planthold, former Ethics Commissioner

Paul Melbostad, former Ethics Commissioner

Sharyn Saslafsky, former Ethics Commissioner

Bob Dockendorff, former Ethics Commissioner

Joe Julian, former Ethics Commissioner

Oliver Luby, former Ethics Commission staffer

Aaron Peskin, past President, Board of Supervisors

Charles Marsteller, former SF Coordinator, Common Cause

Karen Babbitt, community advocate

Larry Bush, Publisher, CitiReport

December 3, 2012

Glenn Rogers, PLA
3425 Alemany Blvd.
San Francisco, CA 94132
Phone 415 333 9317

San Francisco Ethics Commission
Van Ness Avenue, Suite 220
San Francisco, CA 94102
Phone 415 252 3100

Dear Johnny Hosey,

Thank you for asking my opinion on these important issues.

1. Should San Francisco consider increasing 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?

Yes, contributing and fund raising by contractors and others, 6 months before an election, is a bad idea. Six months, for a commercial or public project, is a normal waiting time for a project of this scope to get started. Even a year is too short a waiting period, in my opinion. This is especially true, when fees and services for development, go into the General Fund. The General Fund makes up for shortfalls in the Pension Fund. This fact makes City workers overly friendly to contractors and developers at a time when the City is reaching its carrying capacity.

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

Yes, the City should prohibit registered Lobbyists from contributing to political campaigns. Especially, given the history of political conduct in the City. Sadly, buildings and projects of historical significance, are lacking in The City. One reason for this is, that the City finds the position of developers and lobbyists, very persuasive or compelling.

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

No, for an ordinary citizen running for office, providing a necessary message which would never be spoken otherwise, the amount and specific requirements seem burdensome. The Ethics Commission should make it easier for ordinary citizens to run for office, with little office staff, not more difficult. Also, fines need to be levied on abuses on large, well funded campaigns, not on campaigns run by average citizens.

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

There is no significant difference between a campaign contribution of \$500 or \$700. This being said, leaving it the same is probably preferred.

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?

Having run a campaign myself and being aware of the cost for door hangers (\$375) that can reach 5,000 residents, it would seem that \$1,000 would be a more reasonable limit to ask candidates to report. To ask candidates to report at the \$5,000 amount, would mean numerous expenditures would be bundled into one report.

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?

Yes, reducing the amount of time for available credit, from 6 months to one month, is preferred. It is best to run a campaign, with cash on hand, rather than on credit, of course.

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?

This is a more serious problem than is stated here. The Ethics Commission has never held a misconduct trial for an elected official, Department head or manager, before Sheriff Mirkarimi. The Commission has no real trial guidelines, preferring not to censure Major Lee for perjury in the Sheriff Mirkarimi case. The Ethics Commission demurred since this is a civil matter.

The Ethics Commission has a conflict of interest. The Mayor, Board of Supervisor, City Attorney, District Attorney and the Controller each get to appoint an Ethics Commissioner. These politicians determine the budget of the commission. Should any of these politicians be considered for review by the Ethics Commission, the budget can be influenced. For this reason, many consider the Ethics Commission to be serving the politicians that provide its budget.

Most importantly, the whistle blower program for City employees, does not protect those that come forward with allegations of inappropriate behavior against their Department or Supervisor. Unfortunately, whistle blowers are routinely fired, suspended, laid-off, demoted or shunned by fellow workers. Today, there is still no successful department to track and make public behavior that is wasteful, fraudulent or abusive. May I suggest, this problem might best be handled by, the Sunshine Ordinance Task Force.

Sincerely,

Glenn Rogers, PLA
Landscape Architect
License 3223