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From: LARRY BUSH [REDACTED]

Sent: Wednesday, January 20, 2021 10:50 AM

To: Ambrose, Noreen (ETH) <noreen.ambrose@sfgov.org>; Lee, Yvonne (ETH) <yvonne.lee1@sfgov.org>; Chiu, Daina (ETH) <daina.chiu@sfgov.org>; Pelham, Leeann (ETH) <leeann.pelham@sfgov.org>

Subject: Larry Bush recommendation

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Colleagues:

Happy Inauguration Day! So welcome to turn the page!

I am sending all commissioners and Director Pelham my views in advance of tomorrow's Special Meeting. Of course sending to all commissioners makes this a disclosable document. I would like this also be provided to anyone participating or interested in the discussion on Ethics budget and its impact on our mission and current challenges.

I welcome the views of each of you.

Best regards

Larry Bush, Commissioner

Commissioner Larry Bush recommendations on Ethics budget:

The Proposed budget submission does not comply with Mayor Breed's guidance in these important respects:

- "Supporting small business and economic recovery"
- "Prioritizing programs with demonstrated outcomes"
- "Proposals include..." efficiencies, new revenue sources"
- "present tradeoffs"

The proposal also does not provide needed info on the Board Budget Analyst audit and the four Public Integrity reports by the Controller or bring forward the year-long FBI and US Attorney charges of corruption against five city officeholders. Two more have resigned, and yet more charged stemming from their effort to obtain benefits, licenses or contracts from the city.

"Supporting small business and economic recovery"

Small business and economic recovery are among the first harmed by bid rigging, contract fraud, and favoritism. Bidding on a fair basis is essential for small businesses to succeed. The Controller's report specifically called out potential illegal city awards intended for small businesses in PUC decisions. The total in just that one example was many millions of dollars,

One past bidder who declines to again submit new bids is quoted this way in one article:

"The cost of corruption is not measured in the money allegedly exchanged between, say, Walter Wong and Harlan Kelly," says construction management executive Ali Altaha. "It can be measured in: how much more is it costing taxpayers to build a project?"

“Separate and apart from the competency and honesty of those receiving the contracts, in an artificially constrained pool of bidders, the cost of doing business goes up. “They’ll name their price,” Alaha says.”

National organizations that focus on illegal contracting estimate corrupt practices account for 10%-20% of all public contract dollars. If that scale exists in San Francisco, ending corruption would provide funding for several years of expanded Ethics actions.

### “Prioritizing programs with demonstrated outcomes”

Ethics has proposed a three-year \$2.5 million budget in a new effort *Ethics@work* to train key city officials on ethical behavior. Ethics has not proposed any “demonstrated outcomes” based on this new program.

As things currently stand, several thousand city officials now file Form 700, Statement of Economic Interest. In a second effort to put a focus on ethics at work, each city department issues a Statement of Incompatible Activities that delineates situations for that department. A third leg is that the City Attorney issues an annual Guide to Good Government aimed at commissioners, department officials, and relevant others,

Each of those city officials facing criminal charges for corruption filed Form 700 disclosures, fell under the Statement of Incompatible Activities and each could easily access the City Attorney’s Guide to Good Government. None of this either appears to have deterred unethical behavior nor did it result in a review of those filings by Ethics, and none currently are cited by city authorities over false filing,

A better more cost-effective approach would include these steps:

- A joint Ethics-City Attorney update of the materials in the Form 700 and Incompatible Activities with improved guidance, based in part on the recommendations of the Controller and Budget Analyst. This needs to include an outreach to capture disclosures mandated by city law but which until now appear not to exist.
- A reissued updated Guide to Good Government sent to all city officials and managers,
- A link to submit questions to Ethics or the City Attorney.
- Ethics staff to establish a pool of filings to be reviewed and audited annually, with enforcement based on intentional misrepresentation. Enforcement is the greatest education strategy.
- “Proposals include...” efficiencies, new revenue sources”

Ethics intends to add staff and funds for the migration of Form 700 to an electronic, searchable format. These steps are better alternatives that provide new revenue sources:

A more efficient approach that saves Ethics funds is to adopt the Controller and Budget Analyst recommendation to prioritize those departments that appear to be the focus of enforcement action and/or have revenue sources that do not rely on the General Fund.

The PUC reports that 468 employees file Form 700. The Airport total is 253. DPW reports 361 Form 700 filers. Other major departments are the Department of Public Health (718) and SFMTA (330).

All departments should file Form 700 in pdf format for the April filing so that the public would not have to wait until 2022. As a step toward transparency, Ethics should post all filers by department now. There is not a good argument against this approach given Ethics budget.

An additional enhancement for efficiency and enhanced revenue is that the Commission must adopt the 2012 Budget Analyst audit of Ethics recommendation to enact a private right of action similar to Los Angeles.

Other San Francisco laws and policies include a private right of action as does the state campaign finance law. For example, the suggestion that the private right of action creates a new basis to attack others fails to note that the private right of action already exists in the city's Ethics law. The addition of a share in any penalty is dependent on a court finding a penalty is owed and is the same formula SF adopted unanimously at the request of nonprofits as recently as July in the update to our Owner Move-in Eviction defense. I recommend that the commissioners become familiar with this so they can better respond to any public objections.

On private right of action, to tighten it the City can tighten it somewhat, so it is not nuisance suits and the incentive is to act in cases of egregious violations.

"A resident may bring an action to enforce civil penalties only if the violation (1) relates to a candidate or committee that has raised or spent \$100,000 or more in a year where the violations consists of either improperly reporting \$50,000 or more or receiving \$10,000 or more over the limits, (2) relates to independent expenditures, electioneering communications, or member communications of \$10,000 or more in value per affected candidate, (3) relates to a prohibited payment [*or fundraising*] of \$50,000 or more to a single committee or person, (4) is of Section 1.124, 1.125, 1.126, or 1.127 and occurred more than 12 months after the effective date of the addition of 1.124, 1.125, or 1.127 or the concurrent [*an*] amendment to 1.126, [*or* ](5) is of 1.128 or 1.140, or (6) consists of an untimely or non-filed required Behest Payment disclosure concerning \$50,000 or more."

This adds empowerment of citizens and additional resources for Ethics,

To be more timely in investigations, San Francisco can shorten the time and staffing needs with appropriate contracts.

SF Ethics for lacks a system for public input of advertisements to be reviewed compliance with required disclosures, while the largest number of enforcement cases are actually about disclosure requirements.

The state FPPC has created a system on advertisements. <https://mailchi.mp/fppc/fppc-press-release-number-15-2018?e=ab143721be>

"New for this election season, the agency launched FPPC AdWATCH as a new tool on the FPPC website where the public could help keep an eye on campaign advertising disclosure. Anyone could upload a picture of a campaign sign or a video of a campaign ad they thought may not contain the legally required disclosures.

The public uploaded more than 150 ads through FPPC AdWATCH since its launch in October. That is in addition to the more than 600 ads FPPC Enforcement Division reviewed proactively. It allowed the FPPC Enforcement Division to view these ads quickly to determine if they contained the proper disclosure and take the appropriate action if they didn't. FPPC Enforcement identified more than 120 ads as potentially non-compliant and with further review contacted those involved to take down or correct the advertising.”

SF lags in action on complaints and the lag is growing. Enforcement average grows from 10 months to 15 months a year later. Preliminary review of complaint process shows it has grown from 4.5 months to 7.2 months.

<http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/MediaCenter/2019/FPPC%20provides%20ethics%20and%20campaign%20finance%20enforcement%20for%20locals.pdf>

Other jurisdictions outperform San Francisco in their ability to resolve at least as many cases as they open each year, resulting in fewer cases carried over from prior years. On average, San Francisco closed about half as many cases as it opened between 2017 and 2019, with a high of 88 percent in 2019. In San Diego, for instance, the Ethics Commission closed more investigations than it opened on average between 2017 and 2019, for an average annual closure rate of 106 percent over the three-year period. The San Diego Ethics Commission has one investigator who handles cases from beginning to end. The Los Angeles City Ethics Commission also closed more investigations than it opened between 2018 and 2019, for an average annual closure rate of 117 percent over two years. The Los Angeles City Ethics Commission has a comparable Enforcement Division staff size as San Francisco of four investigators, along with a deputy director and director of enforcement.

The California Fair Political Practices Commission (FPPC) is the state entity that enforces political campaign, lobbying, and conflict of interest laws. They are able to resolve more investigations than they have opened in recent years, with an average annual closure rate of 120

percent. We note that the FPPC has a significant enforcement staff of two working supervisors—one for eight full-time attorneys and one for eight full-time investigators.

[https://sfbos.org/sites/default/files/PA\\_of\\_Ethics\\_Commission\\_Final\\_081020.pdf](https://sfbos.org/sites/default/files/PA_of_Ethics_Commission_Final_081020.pdf) (p 43-44)

Establish clear guidance on Advisory Panels able to do the research and first drafting of policy updates and new requirements as outlined in the Controller's Public Integrity report and the Budget Legislative Analyst audit and publicly accepted with a timetable by Exec Dir Pelham.

It appears that existing loopholes in SF law continue to provide an opportunity to engage in corrupt practices and perhaps an exemption of presumed violation in some instances.

For example, existing SF law did not require appointed department heads like Mr Nuru to file disclosures when requesting contractors to make behested payments. In other cases, the true funding source is hidden because payments pass through a nonprofit that is not required to disclose their donors.

It is unreasonable for a limited staff to identify and close these loopholes even after the Budget Analyst or controller identified them and recommends action.

Other departments such as Elections have advisory committees that allow for a deeper or broader review of policies and their impact.

Ethics should provide clear guidance for establishing advisory committees, their selection, and requirements.

I recommend reaching out to those with expert experience like Dennis Aftergut, past chief deputy in the City Attorney office, past Ethics chairs like Paul Renne, Benedict Hur, Peter Keane as well as former civil grand jury members whose work included reports on Ethics and have taken confidentiality oaths in that effort.

Without additional eyes on this project, we invite delays of three or more years of continued cycle of corruption and disgrace. Given the recent reports, that is unacceptable to the public and to our mission. Without this assistance, Ethics will always lack an ability to deliver timely action

There are a great many specific amendments and do-overs needed, but this proposed response is intended to focus attention on the core, urgent changes needed in the staff proposed budget,

The message couldn't be clearer: "To everyone with a piece of this corruption, again I urge you to help make things right for San Francisco. Run, don't walk to the FBI, before it is too late for you to cooperate."

Ethics as seen in the staff proposed budget, or in its assessment of impacts, can not respond to those who walk in the door, much less run to Ethics

That is something Ethics can not handle now nor under the proposed budget submission.