

1 [Board Response to the 2010-2011 Civil Grand Jury Report Entitled “Whistling in the Dark:
2 The San Francisco Whistleblower Program”]

3 **Resolution responding to the Presiding Judge of the Superior Court on the findings**
4 **and recommendations contained in the 2010-2011 Civil Grand Jury Report entitled**
5 **“Whistling in the Dark: The San Francisco Whistleblower Program” and urging the**
6 **Mayor to cause the implementation of accepted findings and recommendations**
7 **through his/her department heads and through the development of the annual budget.**

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9 WHEREAS, Under California Penal Code Section 933 et seq., the Board of
10 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
11 Court on the findings and recommendations contained in Civil Grand Jury Reports; and

12 WHEREAS, In accordance with Penal Code Section 933.05(c), if a finding or
13 recommendation of the Civil Grand Jury addresses budgetary or personnel matters of a
14 county agency or a department headed by an elected officer, the agency or department head
15 and the Board of Supervisors shall respond if requested by the Civil Grand Jury, but the
16 response of the Board of Supervisors shall address only budgetary or personnel matters over
17 which it has some decision making authority; and

18 WHEREAS, The 2010-2011 Civil Grand Jury Report entitled “Whistling in the Dark: The
19 San Francisco Whistleblower Program” is on file with the Clerk of the Board of Supervisors in
20 File No. 110928, which is hereby declared to be a part of this resolution as if set forth fully
21 herein; and

22 WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond
23 to Finding Nos. F1, F6, F7, F8, F9, F11, F13, and F14 as well as Recommendation Nos. R1,
24 R5, R6, R7, R8, R10, R12, and R13 contained in the subject Civil Grand Jury report; and

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1 WHEREAS, Finding No. F1 states: “The investigation of whistleblower complaints is
2 not independent when performed by the targeted agency or department;” and

3 WHEREAS, Recommendation No. R1 states: “Central Services Auditor (CSA) should
4 perform all investigations. This would require a change to the Charter;” and

5 WHEREAS, Finding No. F6 states: “No detailed final public report of substantiated
6 whistleblower complaints is issued by the City Services Auditor. The lack of public reporting of
7 whistleblower investigations fails to provide transparency in government;” and

8 WHEREAS, Recommendation No. R5 states: “If a complaint is substantiated, a public
9 Finding should be issued that details: 1. The nature of the complaint; 2. What the investigation
10 determined; 3. The name of the respondent; and 4. The penalty applied or actions taken;” and

11 WHEREAS, Finding No. F7 states: “The current Whistleblower protections are
12 inadequate;” and

13 WHEREAS, Recommendation No. R6 states: “An independent administrative law judge
14 should deal with retaliation issues. The responsibility for retaliation complaints should be
15 removed from the Ethics Commission;” and

16 WHEREAS, Finding No. F8 states: “The Jury found that whistleblowers who faced
17 retaliation choose to initially use their union or sue the City rather than using the Ethics
18 Commission to resolve their retaliation complaint;” and

19 WHEREAS, Recommendation No. R7 states: “If an employee who has filed a
20 whistleblower complaint is laid off within two years of having filed the complaint, or within one
21 year of the complaint being closed, an administrative law judge will conduct a full review.
22 Should it be determined that retaliation is a factor in the layoff/termination; the employee shall
23 be awarded up to two years full salary as part of his or her severance package;” and

1 WHEREAS, Finding No. F9 states: “Citizens General Obligation Bond Oversight
2 Committee (CGOBOC) does not provide effective or independent oversight of the
3 Whistleblower program;” and

4 WHEREAS, Recommendation No. R8 states: “CGOBOC must become an effective
5 Whistleblower Program oversight entity by reviewing the number and type of whistleblower
6 complaints, the investigative process used and the final results of investigations at least twice
7 a year;” and

8 WHEREAS, Finding No. F11 states: “Whistleblower Program staff are spending an
9 inordinate amount of time on low level complaints;” and

10 WHEREAS, Recommendation No. R10 states: “Create and institute a filter process to
11 allow redirection of non-waste, fraud and abuse complaints to 311. This would require a
12 change to the Charter;” and

13 WHEREAS, Finding No. F13 states: “A process is needed to give complainants an
14 avenue to appeal a whistleblower investigation if they have questions about how the
15 investigation was conducted or if they disagree with the investigation's conclusions;” and

16 WHEREAS, Recommendation No. R12 states: “Establish an appeals process using an
17 independent administrative law judge for whistleblower complaints that qualify for review.
18 Guidelines must be established to determine legitimate reasons for the appeal of a
19 "dismissed", "no violation found" or "closed" complaint;” and

20 WHEREAS, Finding No. F14 states: “Adding a reward program would create an
21 incentive for individuals to become Whistleblowers;” and

22 WHEREAS, Recommendation No. R13 states: “Establish a reward system for validated
23 high risk whistleblower complaints with a \$500 minimum or 10% of funds recovered,
24 whichever is greater;” and

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1 WHEREAS, in accordance with Penal Code Section 933.05(c), the Board of
2 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
3 Court on Finding Nos. F1, F6, F7, F8, F9, F11, F13, and F14, as well as Recommendation
4 Nos. R1, R5, R6, R7, R8, R10, R12 and R 13 contained in the subject Civil Grand Jury report;
5 now, therefore, be it

6 RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the
7 Superior Court that it ____agrees/disagrees____ with Finding Nos. F1, F6, F7, F8, F9, F11,
8 F13, and F14, for reasons as follows [REDACTED]; and be it

9 FURTHER RESOLVED, That the Board of Supervisors reports that it
10 ____agrees/disagrees____ with Recommendation Nos. R1, R5, R6, R7, R8, R10, R12, and
11 R13, for reasons as follows [REDACTED]; and be it

12 FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the
13 implementation of accepted findings and recommendations through his/her department heads
14 and through the development of the annual budget.

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