

AMENDED IN COMMITTEE
09/11/2014

FILE NO. 140941

RESOLUTION NO.

1 [Board Response - Civil Grand Jury Report - Ethics in the City: Promise, Practice or Pretense]

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3 **Resolution responding to the Presiding Judge of the Superior Court on the findings**
4 **and recommendations contained in the 2013-2014 Civil Grand Jury Report, entitled**
5 **“Ethics in the City: Promise, Practice or Pretense;” and urging the Mayor to cause the**
6 **implementation of accepted findings and recommendations through his/her**
7 **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 California 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 2013-2014 Civil Grand Jury Report, entitled “Ethics in the City:
19 Promise, Practice or Pretense” is on file with the Clerk of the Board of Supervisors in File No.
20 140941, which is hereby declared to be a part of this resolution as if set forth fully herein; and

21 WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond
22 to Finding Nos. 1a, 1b, 1c, 1d, 1e, 1f, 2, 3, 8, 9, 11, 16, 18, 20, 21a, 21b, 24a, 24b, 24c, 25a,
23 25b, 27, and 29, as well as Recommendation Nos. 1, 2, 3, 8, 9, 11, 16, 18, 20a, 20b, 21, 24,
24 25, 27, and 29 contained in the subject Civil Grand Jury report; and

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1 WHEREAS, Finding No. 1a states: “The Ethics Commission lacks resources to handle
2 major enforcement cases. These include, for example, cases alleging misconduct, conflict of
3 interest, violating campaign finance and lobbying laws, and violating post-employment
4 restrictions;” and

5 WHEREAS, Finding No. 1b states: “The Ethics Commission has only two
6 investigators;” and

7 WHEREAS, Finding No. 1c states: “The confidentiality required of Ethics Commission
8 investigations runs counter to the Commission's other duties to make information more public
9 and to increase the transparency of government;” and

10 WHEREAS, Finding No. 1d states: “The District Attorney, City Attorney and the Fair
11 Political Practices Commission have more substantial investigative staffs;” and

12 WHEREAS, Finding No. 1e states: “The Fair Political Practices Commission has been
13 very active in bringing enforcement actions, and handles enforcement for some local units of
14 California government;” and

15 WHEREAS, Finding No. 1f states: “Enforcement is best handled outside of the
16 environment of political partisanship and preferences;” and

17 WHEREAS, Finding No. 2 states: “In some instances, improper campaign
18 contributions were returned to the contributor rather than forfeited to the City as required by
19 City law. The Jury found no record of the Commission acting to waive or reduce the
20 forfeiture;” and

21 WHEREAS, Finding No. 3 states: “A broader citizen’s right of action to enforce ethics
22 laws will provide assurance to the public that the laws will be enforced;” and

23 WHEREAS, Finding No. 8 states: “The current definition of “lobbyist” and “contacts”
24 does not provide the public with sufficient information to understand who and how City Hall
25 decisions are influenced despite the intent of the law;” and

1 WHEREAS, Finding No. 9 states: “The effort to influence City Hall decisions is not
2 limited to contacts with City officials but also includes outreach to community, political and
3 nonprofit organizations as well as to the general public through television ads, mailers,
4 robocalls, polling and other strategies. In 2010 the Ethics Commission proposal was approved
5 by the Board to eliminate reporting on these expenditures;” and

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

12 WHEREAS, Finding No. 16 states: “City officials travel expenses can be covered by
13 gifts made by individuals, lobbyists, business associations, corporations or any other source,
14 including those with financial interests in matters to be decided by the official. The public
15 disclosure is limited to a list of donors or donor organizations contributing \$500 or more, but
16 without specifying the total amount of the gift. Additionally, a significant amount of travel
17 expenses are paid through organizations that do not disclose the names of the original
18 donors;” and

19 WHEREAS, Finding No. 18 states: “The Board of Supervisors is not subject to this
20 calendar requirement. Many members did provide their calendars upon request, and the
21 information in their calendars will be helpful for public understanding of their work;” and

22 WHEREAS, Finding No. 20 states: “Both the Ethics Commission and the Sunshine
23 Ordinance Task Force act in good faith. They are authorized to come to similar ends –
24 transparency in government. However, there are legal and procedural differences between
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1 their process and their legal requirements. Therefore, the results of their work are not in
2 harmony with each other;” and

3 WHEREAS, Finding No. 21a states: “The policy-making powers of the Ethics
4 Commission are vested in the Commission itself, not in the Executive Director (absent
5 express delegation by the Commission);” and

6 WHEREAS, Finding No. 21b states: “The current structure where staff provides much
7 of each Commission meeting’s content creates the impression that the Commission is not an
8 independent policy-making body;” and

9 WHEREAS, Finding No. 24a states: “The Jury was unable to locate and the Ethics
10 Commission was unable to provide copies of any reports or notes of oral presentations to the
11 Mayor or to the Board of Supervisors as required in the Charter to report annually on the
12 effectiveness of San Francisco’s ethics laws;” and

13 WHEREAS, Finding No. 24b states: “The Jury was unable to locate any reports that
14 reviewed changes in laws aimed at transparency and ethical conduct adopted in other
15 jurisdictions that might be relevant to San Francisco. The only references were to changes
16 based on court decisions that resulted in less public disclosure and less protection against the
17 influence of money in politics even when those decisions were not based on San Francisco
18 cases;” and

19 WHEREAS, Finding No. 24c states: “The proper standard to judge the effectiveness of
20 laws is to consider their ability to achieve the purposes set forth when they were enacted;”
21 and

22 WHEREAS, Finding No. 25a states: “Periodic reviews of filed information are essential
23 to ensure its validity;” and

24 WHEREAS, Finding No. 25b states: “The Ethics Commission has undertaken little to
25 no monitoring and auditing of the content of Lobbyists, Campaign Consultants, Conflict of

1 Interest and Governmental Ethics filings beyond fines for late filing of statements; nor have
2 they actively monitored whether former City employees abide by the restrictions on dealing
3 with their former departments;” and

4 WHEREAS, Finding No. 27 states: “The Charter requires that proposals to amend
5 campaign finance and ethics laws explain how the change will assist in furthering the purpose
6 of the law. The Ethics Commission proposals have not included any statements showing that
7 its proposals will further the purposes of the law;” and

8 WHEREAS, Finding No. 29 states: “The Findings and Declarations of Proposition J
9 (2000) clearly articulate many public concerns with role of money in politics and should be re-
10 adopted, perhaps adapted to be part of the general conflict of interest law - Chapter 2 of
11 Article III of the C&GCC;” and

12 WHEREAS, Recommendation No. 1 states: “The Jury recommends a contract with the
13 Fair Political Practices Commission for at least a two-year pilot basis to enforce both state and
14 related San Francisco law violations;” and

15 WHEREAS, Recommendation No. 2 states: “The Board of Supervisors should request
16 an independent audit by the City Attorney to determine whether prohibited contributions were
17 forfeited to the City as required by law;” and

18 WHEREAS, Recommendation No. 3 states: “The Jury recommends that the Ethics
19 Commission and the Board of Supervisors act to enhance the Citizen’s Right of Action to
20 enforce all of the City’s ethics laws, with an award of attorney fees and a share of any
21 penalties going to the City for a successful filer, as was provided by Proposition J;” and

22 WHEREAS, Recommendation No. 8 states: “The lobbyist ordinance should be
23 reviewed and amended to provide clearer public disclosure of contacts with City officials
24 regarding the interests of clients, and who should be required to register and make
25 disclosures;” and

1 WHEREAS, Recommendation No. 9 states: “The requirement for disclosure of all
2 expenditures aimed at influencing City Hall decisions should be reinstated in the law with full
3 public disclosure;” and

4 WHEREAS, Recommendation No. 11 states: “The Ethics Commission in conjunction
5 with the City Attorney should develop a policy to ensure preservation of e-mails and text
6 messages consistent with preservation of other public records. The policy, along with policies
7 on preservation of public records, should be made available for public comment. Once it is
8 completed and published it should be made available on City Attorney and Ethics Commission
9 web pages that lists each Department, its policy, and how to obtain documents;” and

10 WHEREAS, Recommendation No. 16 states: “The Ethics Commission should require
11 full disclosure of contributions or payments for official travel of City officials, including the
12 actual amount contributed and the names of the original donors. The official should also
13 disclose what official business was conducted, including meetings, who participated in the
14 meetings, topics, speeches given, ceremonies attended and other information;” and

15 WHEREAS, Recommendation No. 18 states: “The Board of Supervisors should adopt
16 a rule subjecting themselves to the public calendar requirement of the Sunshine Ordinance;”
17 and

18 WHEREAS, Recommendation No. 20a states: “The Mayor's Office should establish a
19 blue-ribbon committee of experts and stakeholders in open government, sunshine and
20 transparency, including former Sunshine Task Force members. The Committee of Experts
21 should review and update the Sunshine Ordinance as necessary and should report to both
22 entities and the Board of Supervisors recommendations that would result in coordination and
23 respect for the functions of each entity;” and

24 WHEREAS, Recommendation No. 20b states: “For now, arrangements should be
25 made jointly by the Ethics Commission and the Sunshine Ordinance Task Force to have

1 complaints heard by an independent hearing officer who would develop a consistent legally
2 sufficient record of the case for the decision of each body. This would allow the meetings of
3 the Task Force and the Commission to focus on broader policy issues;” and

4 WHEREAS, Recommendation No. 21 states: “The Board of Supervisors should
5 provide the Commissioners an Executive Secretary separate from the existing Commission’s
6 employee base who will, among other duties, prepare the Commission’s agendas, maintain
7 minutes, lists of complaints, serve as a liaison for public input and interested persons
8 meetings and assist a Commission member to be the parliamentarian;” and

9 WHEREAS, Recommendation No. 24 states: “The Mayor and the Board of
10 Supervisors should request an annual written report from the Ethics Commission that meets
11 the standards set out in the Charter for annual reviews of the effectiveness of the City’s laws.
12 This report should be posted on the Ethics Commission web site;” and

13 WHEREAS, Recommendation No. 25 states: “The Ethics Commission should begin to
14 focus Staff resources on monitoring and auditing other items within the Ethics Commission
15 jurisdiction unrelated to campaigns such as the following ordinances: Conflict of Interest,
16 Governmental Ethics, The Lobbyist Ordinance, Campaign Consultant Ordinance and the
17 Sunshine Ordinance;” and

18 WHEREAS, Recommendation No. 27 states: “When a bill is proposed or passed to
19 amend campaign finance and ethics laws, it should specify how it ‘furthers the purposes of
20 this Chapter’;” and

21 WHEREAS, Recommendation No. 29 states: “That the Ethics Commission hold a
22 hearing on "Proposition J Revisited" to consider how some of its concepts apply today and
23 whether the "public benefit" definition includes elements that should be incorporated into
24 sections of the C&GCC, and specifically consider offering amendments to C&GCC which re-

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1 incorporate its Findings and Declarations into current San Francisco law, and to consider
2 placing these amendments on the ballot;” and

3 WHEREAS, In accordance with California Penal Code, Section 933.05(c), the Board of
4 Supervisors must respond, within 90 days of receipt, to the Presiding Judge of the Superior
5 Court on Finding Nos. 1a, 1b, 1c, 1d, 1e, 1f, 2, 3, 8, 9, 11, 16, 18, 20, 21a, 21b, 24a, 24b, 24c,
6 25a, 25b, 27, and 29, as well as Recommendation Nos. 1, 2, 3, 8, 9, 11, 16, 18, 20a, 20b, 21,
7 24, 25, 27, and 29 contained in the subject Civil Grand Jury report; now, therefore, be it

8 RESOLVED, That the Board of Supervisors reports to the Presiding Judge of the
9 Superior Court that the Board of Supervisors agrees with Finding No. 1a; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
11 Supervisors agrees with Finding No. 1b; and, be it

12 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
13 Supervisors disagrees with Finding No. 1c, for reasons as follows: The Board of Supervisors
14 supports the greatest possible transparency at the Ethics Commission, including in its
15 investigations and enforcement actions, but recognizes the Charter provisions cited by the
16 City Attorney; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
18 Supervisors agrees with Finding No. 1d; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
20 Supervisors agrees with Finding No. 1e; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
22 Supervisors agrees with Finding No. 1f; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
24 Supervisors disagrees with Finding No. 2, for reasons as follows: The Board of Supervisors
25 has not formally received information about specific instances but believes the Ethics

1 Commission should follow up on specific allegations; further, the Board of Supervisors notes
2 that candidates are subject to regular auditing as part of their election campaigns; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
4 Supervisors partially disagrees with Finding No. 3, for reasons as follows: The Board of
5 Supervisors understands how a broader right of private action could lead to greater
6 enforcement of the City's ethics laws, but believes that the existing qualified right of private
7 action could be employed more frequently; and, be it

8 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
9 Supervisors partially disagrees with Finding No. 8, for reasons as follows: The ordinance was
10 recently amended by an ordinance sponsored by Board of Supervisors' President David Chiu
11 in partnership with City Attorney Dennis Herrera. The amendments should improve the
12 public's understanding of lobbying activity; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
14 Supervisors agrees with Finding No. 9; and, be it

15 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
16 Supervisors partially disagrees with Finding No. 11, for reasons as follows: The Board of
17 Supervisors agrees that emerging technologies create new challenges for public records laws,
18 but the Board also believes that the City Attorney provides a significant amount of advice in
19 this area, including an updated section on Public Records Laws in the newly revised Good
20 Government Guide; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
22 Supervisors agrees with Finding No. 16; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
24 Supervisors agrees with Finding No. 18, for the reasons as follows: While the requirement
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1 does not officially apply to the Board of Supervisors, most if not all Supervisors regularly
2 respond to public records requests for their calendars; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
4 Supervisors agrees with Finding No. 20; and, be it

5 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
6 Supervisors agrees with Finding No. 21a; and, be it

7 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
8 Supervisors partially disagrees with Finding No. 21b, for reasons as follows: Most Boards and
9 Commissions, whose members receive modest or negligible compensation, rely on significant
10 amounts of staff work; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
12 Supervisors partially disagrees with Finding No. 24a, for reasons as follows: It is unfortunate
13 that the Grand Civil Jury was unable to locate any communications between the Ethics
14 Commission and the Board of Supervisors. Such communications do occur with some
15 regularity, but communication could always be improved and formalized; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
17 Supervisors agrees with Finding No. 24b; and, be it

18 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
19 Supervisors agrees with Finding No. 24c; and, be it

20 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
21 Supervisors agrees with Finding No. 25a; and, be it

22 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
23 Supervisors partially disagrees with Finding No. 25b, for reasons as follows: While there is
24 clearly more work to be done, the Board of Supervisors cannot characterize the amount of
25 work done in this area; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
2 Supervisors partially disagrees with Finding No. 27, for reasons as follows: The Board
3 believes that the Civil Grand Jury is making a technical finding here, not a broader one. The
4 Board also understands the technical response by the City Attorney that such findings are not
5 required, though they would be advisable; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors reports that the Board of
7 Supervisors partially disagrees with Finding No. 29, for reasons as follows: The Board of
8 Supervisors understands the Civil Grand Jury's finding that some provisions of Prop J should
9 be looked at again, but also recognizes the history outlined by the Ethics Commission
10 response to this finding; and, be it

11 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
12 No. 1 will not be implemented, for reasons as follows: While the Board of Supervisors does
13 not have the authority to implement this recommendation, the Board broadly agrees that such
14 an arrangement would likely improve enforcement, and encourages the Ethics Commission
15 and other elected officials to pursue it; and, be it

16 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
17 No. 2 requires further analysis, for reasons as follows: The Board supports this
18 recommendation, but implementing it will require an individual Supervisor to propose an audit,
19 which should be conducted by the Controller's City Auditor Division with assistance from the
20 City Attorney. The Board should report to the Civil Grand Jury on the status of this
21 recommendation within six months from the date of the issuance of the Grand Jury report or
22 by December 26, 2014; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
24 No. 3 will not be implemented, for reasons as follows: The Board of Supervisors is not
25 convinced that the existing private right of action needs to be broadened; and, be it

1 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
2 No. 8 has been implemented, as follows: The Board of Supervisors this year approved
3 Ordinance No. 98-14, which significantly strengthened lobbyist disclosure requirements; and,
4 be it

5 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
6 No. 9 will not be implemented, for reasons as follows: The lobbyist ordinance was recently
7 strengthened by the Board of Supervisors, and the expenditure lobbyist definition was not
8 reinstated, in part because of the history of this provision, as outlined by the Ethics
9 Commission response; and, be it

10 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
11 No. 11 requires further analysis, for reasons as follows: The Board of Supervisors looks
12 forward to upcoming work on this issue by the Sunshine Ordinance Task Force, the Ethics
13 Commission and the City Attorney, and will report back to the Civil Grand Jury after their work
14 and the conclusion of the relevant California Supreme Court case. The Board should report to
15 the Civil Grand Jury on the status of this recommendation within six months from the date of
16 the issuance of the Grand Jury report or by December 26, 2014; and, be it

17 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
18 No. 16 requires further analysis, for reasons as follows: The Board of Supervisors is open to
19 making changes in this area, and looks forward to the additional analysis and
20 recommendations of the Ethics Commission. The Board should report to the Civil Grand Jury
21 on the status of this recommendation within six months from the date of the issuance of the
22 Grand Jury report or by December 26, 2014; and, be it

23 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
24 No. 18 requires further analysis, for reasons as follows: The Board of Supervisors will ask the
25 Clerk of the Board to include this potential Board Rule change in the next round of revisions of

1 the Board's Rules of Order, which is expected in 2014. This process will give the Board the
2 opportunity to make this change. The Board will report back to the Civil Grand Jury within six
3 months from the date of the issuance of the Grand Jury report or by December 26, 2014; and,
4 be it

5 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
6 No. 20a will not be implemented, for reasons as follows: This recommendation is not directed
7 to the Board of Supervisors. Any individual Supervisors could propose the creation of a task
8 force legislatively; and, be it

9 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
10 No. 20b will not be implemented, for reasons as follows: This recommendation relates to the
11 operation of the Sunshine Ordinance Task Force and the Ethics Commission, and is not
12 directed at the Board of Supervisors; and, be it

13 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
14 No. 21 requires further analysis, for reasons as follows: The Board of Supervisors will
15 consider this recommendation as part of the Ethics Commission's next budget. The Board
16 agrees that an additional staff member could improve the effectiveness of the Ethics
17 Commission. The Board will report back to the Civil Grand Jury within six months from the
18 date of the issuance of the Grand Jury report or by December 26, 2014; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
20 No. 24 will be implemented, as follows: The Board of Supervisors would like to receive a
21 written annual report from the Ethics Commission. The Board will report back to the Civil
22 Grand Jury within six months from the date of the issuance of the Grand Jury report or by
23 December 26, 2014; and, be it

24 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
25 No. 25 will not be implemented, for reasons as follows: This recommendation is within the

1 jurisdiction of the Ethics Commission; however, the Board of Supervisors should consider
2 providing additional resources in the next budget process; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
4 No. 27 will be implemented immediately, as follows: The Board of Supervisors believes that
5 individual Supervisors will ask the City Attorney to include such findings in future legislation;
6 and, be it

7 FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation
8 No. 29 will not be implemented, for reasons as follows: This recommendation is directed at
9 the Ethics Commission, though individual Supervisors could also call a hearing on the matter.
10 The Board recognizes the legislative history outlined by the Ethics Commission; and, be it

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

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