Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2013-2014 Civil Grand Jury Report, entitled “Ethics in the City: Promise, Practice or Pretense;” and urging the Mayor to cause the implementation of accepted findings and recommendations through his/her department heads and through the development of the annual budget.

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

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

WHEREAS, The 2013-2014 Civil Grand Jury Report, entitled “Ethics in the City: Promise, Practice or Pretense” is on file with the Clerk of the Board of Supervisors in File No. 140941, which is hereby declared to be a part of this resolution as if set forth fully herein; and

WHEREAS, The Civil Grand Jury has requested that the Board of Supervisors respond to Finding Nos. 1a, 1b, 1c, 1d, 1e, 1f, 2, 3, 8, 9, 11, 16, 18, 20, 21a, 21b, 24a, 24b, 24c, 25a, 25b, 27, and 29, as well as Recommendation Nos. 1, 2, 3, 8, 9, 11, 16, 18, 20a, 20b, 21, 24, 25, 27, and 29 contained in the subject Civil Grand Jury report; and
WHEREAS, Finding No. 1a states: "The Ethics Commission lacks resources to handle major enforcement cases. These include, for example, cases alleging misconduct, conflict of interest, violating campaign finance and lobbying laws, and violating post-employment restrictions;" and

WHEREAS, Finding No. 1b states: "The Ethics Commission has only two investigators;" and

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

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

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

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

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

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

WHEREAS, Finding No. 8 states: "The current definition of "lobbyist" and "contacts" does not provide the public with sufficient information to understand who and how City Hall decisions are influenced despite the intent of the law;" and
WHEREAS, Finding No. 9 states: "The effort to influence City Hall decisions is not limited to contacts with City officials but also includes outreach to community, political and nonprofit organizations as well as to the general public through television ads, mailers, robocalls, polling and other strategies. In 2010 the Ethics Commission proposal was approved by the Board to eliminate reporting on these expenditures;" and

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

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

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

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

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

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

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

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

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

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

WHEREAS, Finding No. 25b states: “The Ethics Commission has undertaken little to no monitoring and auditing of the content of Lobbyists, Campaign Consultants, Conflict of
Interest and Governmental Ethics filings beyond fines for late filing of statements; nor have they actively monitored whether former City employees abide by the restrictions on dealing with their former departments;” and

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

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

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

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

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

WHEREAS, Recommendation No. 8 states: "The lobbyist ordinance should be reviewed and amended to provide clearer public disclosure of contacts with City officials regarding the interests of clients, and who should be required to register and make disclosures;" and
WHEREAS, Recommendation No. 9 states: "The requirement for disclosure of all expenditures aimed at influencing City Hall decisions should be reinstated in the law with full public disclosure;" and

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

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

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

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

WHEREAS, Recommendation No. 20b states: "For now, arrangements should be made jointly by the Ethics Commission and the Sunshine Ordinance Task Force to have
complaints heard by an independent hearing officer who would develop a consistent legally sufficient record of the case for the decision of each body. This would allow the meetings of the Task Force and the Commission to focus on broader policy issues;” and

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

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

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

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

WHEREAS, Recommendation No. 29 states: “That the Ethics Commission hold a hearing on "Proposition J Revisited" to consider how some of its concepts apply today and whether the "public benefit" definition includes elements that should be incorporated into sections of the C&GCC, and specifically consider offering amendments to C&GCC which re-
incorporate its Findings and Declarations into current San Francisco law, and to consider placing these amendments on the ballot;” and

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

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

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

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

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

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

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

FURTHER RESOLVED, That the Board of Supervisors reports that the Board of Supervisors disagrees with Finding No. 2, for reasons as follows: The Board of Supervisors has not formally received information about specific instances but believes the Ethics
Commission should follow up on specific allegations; further, the Board of Supervisors notes that candidates are subject to regular auditing as part of their election campaigns; and, be it

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

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

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

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

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

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

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

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

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

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

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

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

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

FURTHER RESOLVED, That the Board of Supervisors reports that the Board of Supervisors partially disagrees with Finding No. 25b, for reasons as follows: While there is clearly more work to be done, the Board of Supervisors cannot characterize the amount of work done in this area; and, be it
FURTHER RESOLVED, That the Board of Supervisors reports that the Board of Supervisors partially disagrees with Finding No. 27, for reasons as follows: The Board believes that the Civil Grand Jury is making a technical finding here, not a broader one. The Board also understands the technical response by the City Attorney that such findings are not required, though they would be advisable; and, be it

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

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

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

FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation No. 3 will not be implemented, for reasons as follows: The Board of Supervisors is not convinced that the existing private right of action needs to be broadened; and, be it
FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation No. 8 has been implemented, as follows: The Board of Supervisors this year approved Ordinance No. 98-14, which significantly strengthened lobbyist disclosure requirements; and, be it

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

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

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

FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation No. 18 requires further analysis, for reasons as follows: The Board of Supervisors will ask the Clerk of the Board to include this potential Board Rule change in the next round of revisions of
the Board's Rules of Order, which is expected in 2014. This process will give the Board the opportunity to make this change. The Board will report back to the Civil Grand Jury within six months from the date of the issuance of the Grand Jury report or by December 26, 2014; and, be it

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

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

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

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

FURTHER RESOLVED, That the Board of Supervisors reports that Recommendation No. 25 will not be implemented, for reasons as follows: This recommendation is within the Government Audit and Oversight Committee.
jurisdiction of the Ethics Commission; however, the Board of Supervisors should consider providing additional resources in the next budget process; and, be it

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

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

FURTHER RESOLVED, That the Board of Supervisors urges the Mayor to cause the implementation of the accepted findings and recommendations through his/her department heads and through the development of the annual budget.
Resolution responding to the Presiding Judge of the Superior Court on the findings and recommendations contained in the 2013-2014 Civil Grand Jury Report, entitled "Ethics in the City: Promise, Practice or Pretense;" and urging the Mayor to cause the implementation of accepted findings and recommendations through his/her department heads and through the development of the annual budget.

September 11, 2014 Government Audit and Oversight Committee - AMENDED, AN AMENDMENT OF THE WHOLE BEARING SAME TITLE

September 11, 2014 Government Audit and Oversight Committee - RECOMMENDED AS AMENDED AS A COMMITTEE REPORT

September 16, 2014 Board of Supervisors - ADOPTED
Ayes: 11 - Avalos, Breed, Campos, Chiu, Cohen, Farrell, Kim, Mar, Tang, Wiener and Yee

I hereby certify that the foregoing Resolution was ADOPTED on 9/16/2014 by the Board of Supervisors of the City and County of San Francisco.

Angela Calvillo
Clerk of the Board

 UNSIGNED

Mayor

 Date Approved

I hereby certify that the foregoing resolution, not being signed by the Mayor within the time limit as set forth in Section 3.103 of the Charter, or time waived pursuant to Board Rule 2.14.2, became effective without his approval in accordance with the provision of said Section 3.103 of the Charter or Board Rule 2.14.2.

Angela Calvillo
Clerk of the Board