



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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Date: July 2, 2020

To: Members of the Ethics Commission

From: Jeff Pierce, Director of Enforcement & Legal Affairs

Subject: **AGENDA ITEM 12: Enforcement Report for the July 10, 2020 Meeting**

Summary: This report highlights programmatic information and operational updates related to the Enforcement & Legal Affairs Division.

Action Requested: No action is required by the Commission, as this item is for informational purposes only.

Public Corruption

At the Commission's last regularly scheduled meeting in February 2020, Commission Staff highlighted newly revealed allegations of public corruption in the City and County of San Francisco. At that time, the U.S. Attorney's Office had [recently announced](#) its arrest of Mohammed Nuru, then-Director of Public Works, and Nick Bovis, a San Francisco restaurateur, in relation to multiple unlawful schemes including attempted bribery of a San Francisco Airport Commissioner, unlawful and unreported gifts, and misuse of office and misuse of City resources, conduct that the Federal Bureau of Investigation identified through the use of wiretaps and undercover informants dating back to at least 2018.

In the wake of the initial news regarding the arrest of Mohammed Nuru, San Francisco Mayor London Breed called on the City Attorney's Office, with the support of the Controller's Office, to conduct their own investigation of Public Works, including by identifying any potential violations of conflicts of interest and governmental ethics laws and by evaluating potential vulnerabilities in the City's contracting and procurement processes. On Monday June 29, the Office of the Controller released its first policy and process assessment to prevent fraud and violations of local law, [Preliminary Assessment: San Francisco Public Works Contracting](#). The Controller's Office has been invited to present an overview of its findings and recommendations for the Ethics Commission under Agenda Item 3 at the Commission's July 10 meeting.

Since February, federal and City officials have taken the following additional actions, among others, to investigate and eliminate public corruption in the City and County of San Francisco:

- On February 27, 2020, the City Attorney's Office published [14 subpoenas](#) focused on the mixed-use development project at 555 Fulton Street in Hayes Valley and on Walter Wong, a San Francisco permit expeditor and contractor. (These were in addition to the [ten subpoenas](#) it had published on February 12, 2020, directed to eight companies and nonprofits that may have funneled donations to fund City programs and events, including funding Public Works holiday parties.)
- On March 10, 2020, the City Attorney's Office announced its findings that [Tom Hui](#), then-Director of the Department of Building Inspection (DBI), had provided unlawful preferential treatment and access to Wong (the permit expeditor noted above), had accepted unlawful gifts from Wong and Zhang Li (the developer behind the project at 555 Fulton Street noted above and subject to the jurisdiction of DBI), and unlawfully used his City position to influence employment decisions affecting his son and his son's girlfriend. Following that announcement Mayor London Breed called on the Building Inspection Commission to terminate Hui, but Hui resigned before the Commission could act.
- On March 12, 2020, the City Attorney's Office announced that it had amended a prior civil complaint initiating a lawsuit against former Building Commission President [Rodrigo Santos](#) and his construction engineering firm. The lawsuit alleged permit fraud and building code violations in relation to unpermitted work at several San Francisco properties; the amended lawsuit included additional properties that were part of the permit fraud scheme and added new allegations that Santos had engaged in check fraud valued at \$420,000 by depositing into his personal bank account checks from clients intended as payments to agencies of the City and County of San Francisco. Former mayor Willie Brown appointed Santos to the Building Commission in 2000, and former mayor Gavin Newsom appointed Santos to the position of Commission President in 2004.
- On May 12, 2020, the U.S. Attorney's Office announced that it had brought criminal charges against former Building Commission President [Rodrigo Santos](#), in relation to the check fraud scheme that the City Attorney's Office had included in its civil lawsuit.
- On May 13, 2020, the U.S. Attorney's Office announced that restaurateur [Nick Bovis](#) had pleaded guilty to the fraud charges against him, had agreed to surrender any assets he gained through his fraud, and had agreed to cooperate with the federal investigation.
- On June 8, 2020, the U.S. Attorney's Office announced as part of its ongoing investigation into Public Works that it had brought criminal charges against [three more individuals](#), including (1) Sandra Zuniga, who was San Francisco's Fix-It Director and Director of the Mayor's Office of Neighborhood Services; (2) Balmore Hernandez, a longtime employee of Public Works and now the Chief Executive Officer and Vice President of San Francisco-based construction engineering firm AzulWorks, Inc.; and (3) San Francisco-based construction company owner Florence Kong, formerly a member of the San Francisco Immigrant Rights Commission.
 - Zuniga was determined to have been Nuru's longtime romantic partner and was charged with conspiring with him to commit money laundering to hide the proceeds

of his corruption. She was also charged with having received unlawful gifts of travel from City contractors.

- Hernandez was charged with a pay-to-play scheme in which he is alleged to have provided tens of thousands of dollars in labor and materials to Nuru, chiefly for the construction and improvement of Nuru's vacation home in Stonyford, California, in exchange for Nuru's assistance with public contracts and City approvals.
- Kong was charged with lying to federal investigators when she denied having attempted to obtain from Nuru contracting advantages for her two companies, despite wiretap recordings to the contrary. She is further alleged to have given unreported and unlawful gifts to Nuru, including cash, a \$40,000 gold Rolex watch, expensive meals, and the installation of a gate for his vacation home.
- On June 10, 2020, the Mayor's Office announced that it had terminated Zuniga from her exempt position as director of the Mayor's Office of Neighborhood Services and that Public Works was moving to terminate her from her civil service position as Fix-It director.
- On June 24, 2020, the U.S. Attorney's Office announced a plea deal in which contractor and permit expeditor [Walter Wong](#) admitted to having conspired with Nuru and other unnamed City officials since as early as 2004 to defraud the public through a scheme involving bribery, kickbacks, and the concealment of material information. Wong also admitted to conspiring with Nuru and others to commit money laundering. Wong is the sixth person charged in the federal investigation and the second to plead guilty, after restaurateur Nick Bovis.
- On June 29, 2020, the Controller's Office released its [Preliminary Assessment](#), as noted above.
- Separately, the Board of Supervisors has moved forward in its development of legislation that would amend the City Charter to create the role of Public Advocate, as this month's Policy Report in Agenda Item 11 has highlighted. Enforcement Staff are coordinating with the Policy Division to provide any necessary feedback regarding the proposal, including potential impacts to the Enforcement Division's exercise of its jurisdiction and amendments to the Whistleblower Protection Ordinance that may become necessary if the proposal is adopted.

By way of reminder, the Charter prevents the Enforcement Division from providing any updates regarding any investigative work it may be undertaking in relation to any of the public corruption allegations described above or otherwise revealed in the last several months.

Streamlined Administrative Resolution Program

Staff have continued to prepare proposed regulations that would govern a significantly expanded Fixed Penalty Policy to be implemented in the form of a new Streamlined Administrative Resolution Program. Shifting operational demands and a required resubmission of departmental budgets owing to the City's COVID-19 pandemic response needs have delayed Staff's ability to complete internal review of that

proposal and carry it forward for Commission feedback and public participation. Staff welcome input from the Commission on whether it continues to desire that Staff bring its proposal before the Commission at the next regularly scheduled meeting. Alternatively, Staff could pursue Interested Persons meetings in advance of bringing its proposal before the Commission, which Staff would intend to conduct via WebEx remote participation.

Online Complaint Process

Enforcement Staff have continued to collaborate with staff of the Electronic Disclosure and Data Analysis (EDDA) division to develop a tool for the filing of complaints online. To date, Staff have beta tested a proposed system internally among Ethics Commission Staff. Enforcement and EDDA Staff will implement revisions to the proposal based on that internal feedback before providing access to the system for further feedback and external beta testing by counterparts in other departments. Pending any subsequent revisions based on that external review, Staff would then intend to initiate a pilot program of the online complaint process for use by the public.

Programmatic Highlights: Review of FY20

The Enforcement Division tracks various metrics as one tool in evaluating its efforts to fulfill the Commission's enforcement mandate. A review of some of those metrics for Fiscal Year 2020 is provided below, along with a comparison to those same data from the two prior fiscal years.

Table 1 - Enforcement Data for Fiscal Years 2018, 2019, and 2020

Fiscal Year	Complaints received during Fiscal Year	No Jurisdiction/ No Further Action/ Consult by Enfct Director	Preliminary Reviews Completed	Matters Dismissed or Referred	New Investigations Opened	Matters Resolved	Determined No Probable Cause Existed	Closed per Enfct Regs Citing Interests of Justice	Matters Settled	Total Penalties
FY18	163	34	181	120	61	15	5	2	8	\$27,000
FY19	83	30	108	74	34	22	8	7	7	\$34,000
FY20	81	45	75	55	20	48	15	27	8	\$25,000

Among the eight matters the Commission settled in Fiscal Year 2020, the Division assessed approximately \$25,000 in penalties, with an average penalty of approximately \$3,000 per matter. Those settlements included counts for the following kinds of violations:

1. Misuse of City office to influence governmental decisions at the agency where the respondent served as a commission member, to create an improper advantage in seeking subsequent employment with that same agency, in violation of Campaign & Governmental Conduct Code section 3.210 (penalty: \$9,000);

2. Significant and pervasive failure to adhere to advertising disclaimer requirements resulting in confusion about whether the ads were paid for by a candidate committee or were instead newspaper endorsements, in violation of Campaign & Governmental Conduct Code section 1.161 (penalty: \$8,000);
3. Failure to register as a committee and failure to file campaign finance disclosure statements, in violation of Campaign & Governmental Conduct Code section 1.106 and Government Code sections 84101 and 84200 (penalty: \$2,000).
4. Failure to adhere to advertising disclaimer requirements in text message advertisements, resulting in confusion about whether the messages were sent by individual volunteers or were instead, in reality, distributed by a commercial text messaging service, in violation of Campaign & Governmental Conduct Code section 1.161 (penalty: \$2,000);

In addition to these enforcement outcomes, the Commission discussed in August 2019 [process improvements](#) underway within the Enforcement Division. At that time the Commission adopted a set of discretionary factors by which Staff exercise heightened prosecutorial discretion in prioritizing certain matters over others. Enforcement Staff have implemented those discretionary factors over the last months and those factors are reflected in the Table 1 data regarding dismissals and closures during FY20.

Those process improvements likewise identified a process by which Enforcement Staff provide immediate guidance to informal complainants whose complaints may be better handled by agencies other than the Ethics Commission. Increased implementation of that protocol is likewise reflected in the statistics above in the relatively greater number of complaints handled via the Commission's Consultation and No Further Action process.

Programmatic Updates

As also noted in the Executive Director's July monthly report, during the COVID-19 pandemic, three of the Enforcement Division's five staff members have been deployed on temporary assignments to contribute directly to the City's crisis relief efforts. The Enforcement Director worked for four weeks as a Site Monitor in one of the hotels where the City has rehomed vulnerable individuals experiencing homelessness. Senior Investigator Eric Willett worked for three weeks at the City's main Emergency Operations Center where he was lead in monitoring and tracking resource requests and resource delivery. Senior Investigator Thomas McClain is currently serving an extended, two-month deployment at the Emergency Operations Center, where he is the Deputy Feeding Unit Leader, overseeing efforts to coordinate the provision of food to those experiencing scarcity. In addition, Senior Investigator and former Commission Auditor Eric Willett has continued to provide assistance to the Audit Division in administering the public financing program while one of the Commission's Auditors continues to serve in a DSW assignment.

Despite these staffing impacts, since mid-March and the issuance of the first Shelter-in-Place Public Health Order, closure of the Commission's physical offices, and a continued vacancy in one of the

Division's four investigator positions (Investigative Analyst, 1822), the Commission's investigative staff, among other actions, have:

- Resolved more than 20 matters in Preliminary Review;
- Determined through formal investigation and as ratified by Commissioner review that probable cause did not exist to believe that a violation of law had occurred in nearly 10 matters;
- Applied prosecutorial factors endorsed by the Commission in August 2019 and closed nearly 20 matters in alignment with those factors;
- Provided consultation by telephone and email to approximately 10 complainants who brought informal complaints to the Enforcement Division alleging violations of law outside the Commission's jurisdiction.

The following tables compare the number and average age of the Commission's enforcement docket to the same figures as reported one year ago and two years ago:

Table 2 - Number and Average Age of Matters in Preliminary Review

Month	July 2018	August 2019*	July 2020
Number	78	61	42
Avg. Age (mo.)	1.6	7.6	7.3

Table 3 - Number and Average Age of Matters in Open Investigation

Month	July 2018	August 2019*	July 2020
Number	83	95	67
Avg. Age (mo.)	12.1	16.0	19.6

*The Commission held no meeting in July 2019.

Attachment 1 contains additional data on the type and age of matters under preliminary review. Attachment 2 contains additional data on open investigations.

Referrals to Bureau of Delinquent Revenues

Under San Francisco Charter section C3.699-13(c)(i)(3), the Ethics Commission must refer to the Bureau of Delinquent Revenue penalties—including late fees—that the Commission has assessed but which remain unpaid after a specified period of time. The table below summarizes the status of accounts that the Bureau is handling on behalf of the Ethics Commission, as last updated before the Shelter-in-Place order took effect. Although the accounts may not reflect the most current status, Staff nevertheless provides the table for the benefit of the Commission's newest member, by way of introduction to this process regarding outstanding debts owed to the Commission. Commission Staff will work with the Bureau to obtain more current updates ahead of the next Commission meeting.

Committee/ Filer	Origin	Treasurer/ Responsible Officer	Referral Date	Original Amount Referred	Current Balance	General Status	Status
Chris Jackson for Community College Board 2012	Campaign finance late fees	Chris Jackson	7/12/13	\$6,601	\$5,101	Judgment	Wage garnishment filed.
Chris Jackson	Enforcement penalty: on stipulation, failure to file semiannual and preelection campaign statements and associated recordkeeping violations	Chris Jackson	9/26/16	\$6,100	\$6,100	Judgment	Wage garnishment filed.
Committee to Elect Norman for Supervisor	Enforcement penalty: after hearing on the merits, found six counts of failure to file required semiannual campaign statements	Jacqueline Norman	5/1/15	\$9,000	\$9,000	Judgment	No change in resident status, Debtor continue to evade collections. Order of Examination Hearing rescheduled to 6/18/2020. Skip Tracing to locate place of residence, employment and additional assets.
Isabel Urbano	Lobbyist late fees	Isabel Urbano	3/23/16	\$7,000	\$6,850	Agency Assignment	Assigned to collections agency.
Lynette Sweet	Enforcement penalty: after hearing on the merits, recordkeeping violation in publicly financed race for supervisor	Lynette Sweet	12/29/16	\$74,408	\$74,408	Bankruptcy	Legal Department has filed a Notice of Settlement of Entire Case with the Superior Court.
SF Latino Democratic Club	Campaign finance late fees	Sarah Souza	6/21/19	\$10,979	\$10,979	Defaulted on Payment Plan	Negotiating with Attorney for payment.
San Franciscans for Democracy, Yes on D Committee	Campaign finance late fees	Jeremy Pollock	6/21/19	\$1,625	\$1,625	No response from Debtor	Small Claims suit filed. Hearing date 3/24/2020.

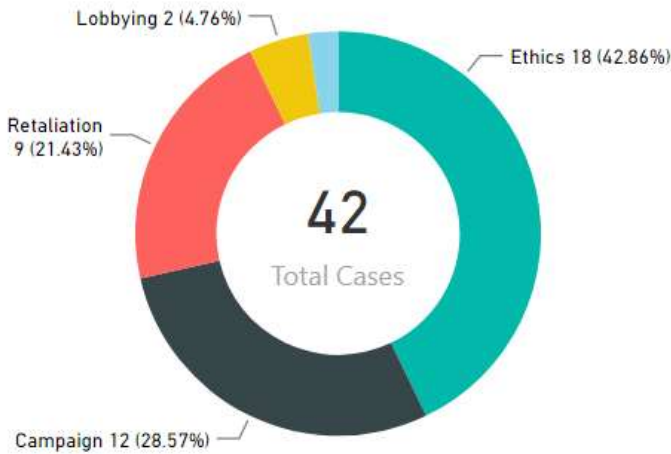
Committee/ Filer	Origin	Treasurer/ Responsible Officer	Referral Date	Original Amount Referred	Current Balance	General Status	Status
Arlo Smith For Democratic County Central Committee	Campaign finance late fees	Arlo Smith	4/30/2019	\$1,750	\$1,750	Refuse to Pay	Small Claims suit filed. Hearing date 4/29/2020.
Jeffrey Ubben	Campaign finance late fees	Jeffrey Ubben	1/28/2020	\$4,975	\$4,975	No response from Debtor	Delinquency letter sent. Message left for call back.
Joshua Arce for SFDCCC Member 2016	Campaign finance late fees	Andrew Sinn	1/28/2020	\$425	\$425	No response from Debtor	Delinquency letter sent.
Richard Matthews	Enforcement penalty: on stipulation, three counts in violation of the prohibition on knowingly attempting to influence a governmental decision involving his own appointment for employment	Richard Matthews	1/28/2020	\$9,000	\$9,000	No response from Debtor	Mailed intention to file lawsuit letter.
Transport Workers Union Local 250A Cope Fund	Campaign finance late fees	Terrence Hall	1/28/2020	\$2,400	\$2,400	Refuse to Pay	Mailed intention to file lawsuit letter; Debtor has since contacted Commission Staff seeking relief.
Yes on U, Working Families Fighting to Stay in San Francisco	Campaign finance late fees	Matthew Alvarez	1/28/2020	\$675	\$700	Promise to Pay	Had indicated promise to pay in full 3/13/2020.
Yes on P, Competitive Bidding for City Contracts with Funding	Campaign finance late fees	Matthew Alvarez	1/28/2020	\$675	\$700	Promise to Pay	Had indicated promise to pay in full 3/13/2020.
Total:							\$134,013

I look forward to answering any questions you might have at the upcoming Commission meeting.

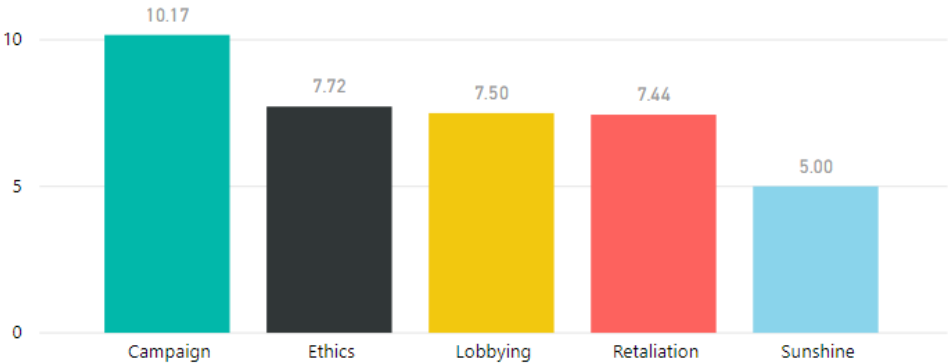
Agenda Item 12, Attachment 1



Matters in Preliminary Review by Type

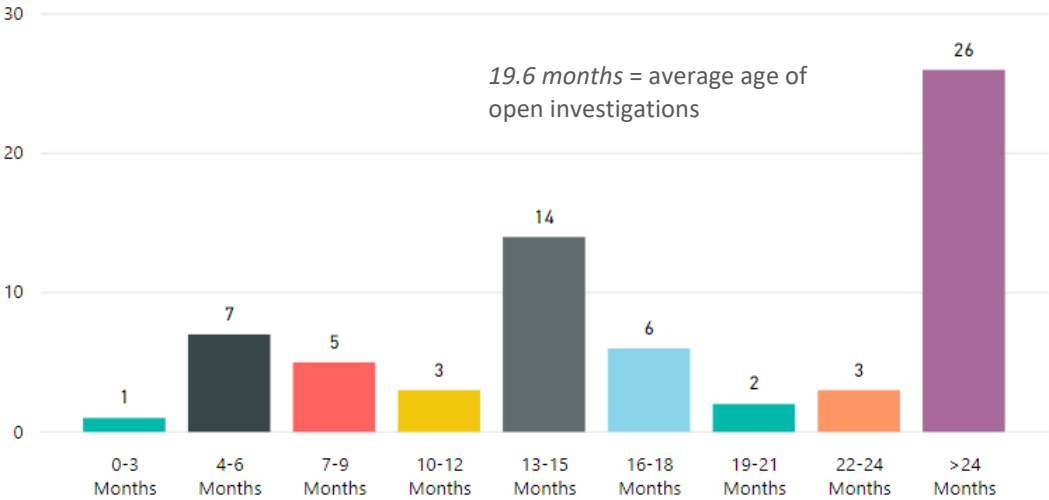


Average Age of Matters in Preliminary Review by Type

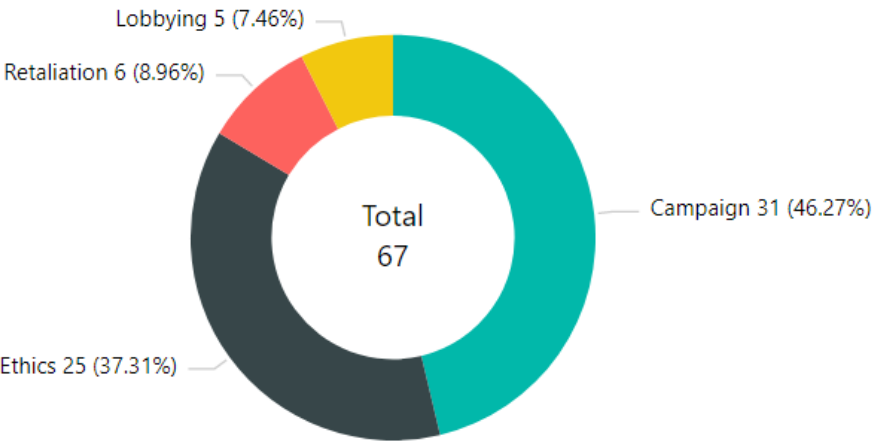


Agenda Item 12, Attachment 2

Age of Matters under Open Investigation



Open Investigations by Type



Average Age of Matters under Open Investigation by Type

