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CITY AND COUNTY OF SAN FRANCISCO

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Date: September 4, 2020

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy and Legislative Affairs Counsel

Re: **AGENDA ITEM 6 – Discussion and Possible Action on Monthly Staff Policy Report, Including the Policy Prioritization Plan**

Summary: This memorandum provides updates on ongoing policy projects, pending local legislation, and other operational projects involving the Policy Division to assist the Commission, the public, and Staff in engaging with the Commission’s policy work. The Policy Prioritization Plan is included as Attachment 1.

Action Requested: That the Commission review the updates provided in this report and approve Staff’s proposed ongoing Policy Prioritization Plan.

Section I of this memorandum provides status reports about ongoing policy projects that the Commission has identified as policy priorities as part of its Policy Prioritization Plan (PPP). This section also outlines Staff’s planned reprioritization of its policy work for the coming months. Section II provides information about ongoing operations and projects that, while not a part of the Commission’s Policy Prioritization Plan, regularly require ongoing attention and resources of the Policy Division.

I. Policy Prioritization Plan – Summary of Current Projects and Proposed Projects

As discussed in the July Policy Report, Staff have completed the projects that were identified as priorities on the PPP during the last fiscal year. These projects were a review of the City’s public campaign financing program, the enactment of regulations requiring universal electronic filing of the Form 700 in an electronic format prescribed by the Ethics Commission for all designated departmental filers, and revisions to the Campaign and Governmental Conduct Code regulations.

This section describes the two new policy projects that staff have identified as essential for review to improve the effectiveness and impact of core governmental ethics laws. An updated Policy Prioritization Plan that reflects these projects is attached to this report as Attachment 1.

A. Review of Conflict of Interest Code and Regulations

Article III, Chapter 2 of the Campaign and Governmental Conduct Code sets forth San Francisco's local rules regarding governmental ethics and conflicts of interest. These rules include prohibitions on certain gifts, restrictions on official actions that affect family members, post-employment restrictions, political activity restrictions, and many other rules that are designed to ensure that City officials and employees act in the public's interest and not to benefit themselves personally. These rules compliment California's conflict of interest rules, which also apply to City officers and employees.

In January of this year, the FBI announced a federal corruption case against Mohammed Nuru, then the Director of the Department of Public Works, and Nick Bovis, a local businessman. On March 10th, the City Attorney sent a report to the Mayor detailing allegations that the Director of the Department of Building Inspection, Tom Hui, also violated state and local ethics laws. Hui subsequently resigned. On June 8th, the FBI charged three additional individuals with crimes related to the original complaint against Nuru and Bovis: Sandra Zuniga, director of the Mayor's Office of Neighborhood Services, and Balmore Hernandez and Florence Kong, both City contractors. On June 24th Walter Wong, a permit expediter, was also charged with related crimes. Some of the conduct for which these individuals have been investigated and charged includes attempting to bribe a City commissioner, giving and receiving gifts in exchange for favorable treatment by the City, and laundering gifts to disguise their source and nature. If true, these allegations demonstrate an alarming level of unethical conduct in and around City government and its decision making processes.

The City Attorney's office and the Controller have also undertaken investigations of multiple City departments and private organizations in response to the federal allegations. On June 29th, the Controller's office released its preliminary assessment including a recommendation that San Francisco's gift rules be tightened to eliminate loopholes.¹ These City investigations may reveal additional unethical conduct aside from the allegations in the federal investigation. In preparation for its policy review of the City's ethics laws, Staff continues to closely monitor the information that is emerging from all of the investigations.

The alleged conduct described in the federal and local investigations demonstrates the harm to the public trust when government officials place their own self-interest above that of the public and misuse their public positions for their own private gain. Ensuring San Francisco's governmental ethics and conflict of interest laws are strong and effective is vital to preventing this kind of unethical behavior and promoting City government that operates only in the public's interest. Like any area of local law, it is important to review these rules from time to time to ensure that they effectively serve their intended purposes. And, importantly, any time new revelations emerge that may indicate a prevalence of conflicts of interest, it is important that the Commission use the occasion to closely evaluate whether changes to the law are required.

¹ PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: PUBLIC WORKS CONTRACTING, City and County of San Francisco, Office of the Controller (June 29, 2020), *available at* <https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20-%20Deliverable%201%2C%20Public%20Works%20Contracting%206.29.2020.pdf>.

Given the gravity and scope of the current allegations against various individuals employed by or working with the City, Staff proposes prioritizing a comprehensive review of the City's ethics and conflict of interest laws to assess whether current law adequately identifies and prohibits conduct that could give rise to a conflict of interest or otherwise serves to undermine fair and objective government decision making. At a minimum, the project should examine gift rules, considering that gifts to City officers have been a recurring theme in the present allegations. The Controller's office has also identified gift rules as an area of the law that warrants scrutiny, which further highlights its importance. However, there exist other areas of the law that could also be improved in light of the developing corruption probes. The review project should also explore the following topics:

- Limiting or removing certain exceptions that allow for otherwise prohibited gifts, including the exceptions for gifts from personal friends and gifts of food and drink;
- Strengthening rules regarding gifts of travel;
- Strengthening rules regarding gifts from restricted sources;
- Making the *giving* of prohibited gifts unlawful, as opposed to only the *receipt* of such gifts;
- Increasing liability for individuals who knowingly act as an intermediary for prohibited gifts;
- Strengthening rules regarding gifts made to City departments and creating penalties for failure to adhere to such rules;
- Simplifying the overall complexity of current gift rules;
- Incorporating common provisions found in departmental Statements of Incompatible Activities directly into the City's ethics and conflict of interest statute; and
- Strengthening post-employment restrictions.

A project of this scope is overdue and warranted, particularly given the severity of the most recent allegations discussed above. It is likely that this project would take at least twelve months from the initial research phase until final and full implementation of all new laws. As with any comprehensive policy review, Staff will need to gather information and review all relevant code sections, regulations, compliance materials, and advice letters. The project will also involve engaging with other City departments, other jurisdictions, public stakeholder groups, the regulated community, and local advocates to understand various perspectives regarding the state of the law and operational issues that have been encountered in complying with the law. Any new laws that are proposed will require an ordinance and/or set of regulation amendments to be drafted and presented to the Commission and feedback elicited from interested persons. Any ordinance would require collaboration with the Board of Supervisors and the Mayor's Office. Following enactment of an ordinance or set of regulations, Policy would assist other Ethics staff in implementing the new laws so that City officers and employees are made aware of the changes and clear compliance guidance is made easily accessible.

B. Biennial Review of City's Designated Employee Form 700 Filers

State law requires that every two years local jurisdictions review which of their officials and employees are required to file the Form 700 and make any necessary updates based on changes in the duties associated with the positions.² This process must take place during 2020, and, as described in prior Policy reports, Policy has already been collaborating with the City Attorney's

² Cal. Gov. Code § 87306(b). *See also* Campaign & Gov. Conduct Code § 3.1-100 et seq. (containing lists of designated City positions that must file the Form 700).

office, the Clerk of the Board, and the Department of Human Resources to coordinate this process. It is possible that the prospect of mandatory electronic filing for all Form 700 filers will generate higher than normal interest in this year's biennial review project by filers and their bargaining units. It is important that during this process Ethics Commission Staff is available to provide assistance to departments as they analyze their lists of designated filers, providing subject matter expertise on Form 700 filing requirements. Although departments must ultimately make the decisions about which employees need to file the Form 700, Staff can help departments understand the state rules that establish the Form 700 filing requirements. As such, Policy plans to pursue this required element of the City's financial disclosure framework as a policy project moving forward. This will allow Policy to facilitate inter-departmental coordination of the overall project and to help guide other Ethics Commission Staff members who may provide direct advice to other City departments regarding Form 700 filing requirements.

II. Miscellaneous Policy Administrative Projects

Policy has been engaged on a number of items during the last month that do not fall within the policy projects identified under the Policy Prioritization Plan. This work includes: research and advice to Staff and the regulated community regarding the laws administered by the Commission, legislative affairs, and media relations. As described in the August Policy Report, the major initiatives have been assisting executive Staff with collecting information and preparing communications regarding the Commission's budget, participating in the Budget and Legislative Analyst's performance audit of the Commission, and providing election-related advice to Staff regarding disclosure laws and the public financing program. Most of these initiatives are discussed in other agenda items, and Policy does not have separate updates to share at this time.

ATTACHMENT 1

Policy Prioritization Plan (PPP)

Active Policy Projects

Priority	Project	Impact	Urgency/ Timeliness	Project Timeframe
1	<p>Conflict of Interest Code and Regulations Review (Art III, Ch II):</p> <p>This project entails a review of all relevant codes and regulations and identify potential changes to improve program outcomes. Conflict-of-interest rules, including gift rules, that are located in other chapters of the Code will also be examined.</p>	9	10	12 Months
2	<p>Biennial Conflict of Interest Code Review:</p> <p>This project entails collaboration with the Clerk of the Board, the City Attorney, and the Department of Human Resources to lead the City's biennial review of designated employee Form 700 filers.</p>	7	9	6-9 Months

Potential Policy Projects

Project	Impact	Urgency/ Timeliness	Staff Commitment & Project Timeframe
<p>Permit Consultant Program Review (Art III, Ch IV):</p> <p>This project would entail a review of relevant codes and regulations pertaining to the regulation of Permit Consultants (Permit Expeditors) and identify potential changes to improve program outcomes.</p>	5	6	3-6 Months
<p>Lobbying Code and Regulations Review (Art II, Ch I):</p> <p>This project would entail a review of relevant codes and regulations pertaining to the regulation of lobbyists (including contact lobbyists and expenditure lobbyists) and identify potential changes to improve program outcomes.</p>	6	5	6-9 Months

Policy Prioritization Plan (PPP)

<p>Online Political Advertisement Project</p> <p>This project would explore issues related to online political advertising and identify any areas where legislative, regulatory, or programmatic improvements are needed.</p>	5	4	6-9 Months
<p>Campaign Consultant Program Review (Art I, Ch V):</p> <p>This project would entail a review of relevant codes and regulations pertaining to the regulation of campaign consultants and identify potential changes to improve program outcomes.</p>	3	5	3-6 Months
<p>Major Developer Program Review (Art III, Ch V):</p> <p>This project would entail a review of relevant codes and regulations pertaining to the regulation of certain payments by major developers and identify potential changes to improve program outcomes.</p>	4	3	3-6 Months
<p>Slate Mailer Project</p> <p>This project would explore the benefits, costs, feasibility, and legality of ending slate mailer disclosure filings with the Department of Elections and instituting slate mailer disclosure filings with the Ethics Commission.</p>	3	3	9-12 Months