



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: December 10, 2020

To: Members of the Ethics Commission

From: LeeAnn Pelham, Executive Director
Pat Ford, Senior Policy and Legislative Affairs Counsel

Re: **AGENDA ITEM 7 – Discussion and Possible Action on Ethics Commission responses to ongoing corruption allegations to date**

Summary This memo provides background on a range of activities underway by Commission staff in response to the ongoing public corruption allegations.

Action Requested No action is required as this item is provided as an informational update only. However, the item has been agendaized for possible action should the Commission wish to take action as a body to provide any policy direction or feedback on these activities as may be appropriate.

Throughout 2020, the City has seen a number of officials, employees, and contractors charged with crimes of corruption by the federal government. Additionally, as you know from presentations at Commission meetings over the past several months on a series of Public Integrity Reports by the Controller's Office, the Controller and City Attorney are conducting large scale inquiries into corrupt activities within the City, including to identify and prevent future violation of city laws and policies.

Most recently, since the Commission's last meeting, new charges were revealed on November 30 with public announcement that Harlan Kelley, then-director of the City's Public Utilities Commission, was charged with fraud for allegedly taking bribes. Kelly subsequently resigned his position.

As 2020 comes to a close against this continuing and deeply concerning backdrop, this report is designed to provide the Commission with an informational update on efforts being undertaken broadly at the Staff level in response to the range of allegations that have emerged this year, including steps being taking to assess the allegations to determine whether enforcement responses may be warranted, and to identify policy, outreach, and public education approaches that can help prevent similar incidents in the future.

Section 15.103 of the San Francisco City Charter provides that "[p]ublic office is a public trust and all officers and employees of the City and County shall exercise their public

duties in a manner consistent with this trust.” City officials and employees, therefore, are to perform their duties in the interest of the public, not to further their own personal interests or gain. This principle is vital to maintaining an effective and merit-based system of local government and to preserving the public’s trust that their systems of democratic governance are fair, just, equitable, and effective. The pattern of allegations that has emerged this year – and particularly in the midst of an unprecedented public health crisis that has had severe and direct implications for the operation of city government and in the lives of so many San Franciscans – has brought into sharp focus how crucial public trust in government is, and how severely that trust can be shaken when alleged wrongdoing is revealed.

Summary of Allegations

Prior to the charges announced against former PUC Director Kelly on November 30, the following additional corruption allegations have come to light in 2020:

- In January 2020, 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. The pair were charged with fraud for multiple alleged schemes to rig City contracts, including a scheme to bribe an Airport commissioner.
- Based on the facts alleged in the FBI’s complaint against Nuru and Bovis, it is possible that Airport Commissioner Linda Crayton violated the Campaign and Governmental Conduct Code through her interactions with potential contract bidders.
- 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 Sandra Zuniga, director of the Mayor’s Office of Neighborhood Services, with conspiracy to commit money laundering for allegedly helping Nuru launder bribes.
- On June 8th, the FBI also charged two City contractors, Balmore Hernandez and Florence Kong, with fraud and bribery, respectively, for allegedly attempting to bribe Nuru for favorable treatment on City contracting awards. Both have agreed to plead guilty, and Hernandez is cooperating with the federal investigation.
- On June 24th, Walter Wong, a permit expediter, was charged with conspiracy to commit fraud and conspiracy to commit money laundering for his involvement with Nuru. Wong agreed to plead guilty and cooperate with the federal investigation.
- On September 17th, Alan Varela and William Gilmartin III were charged with bribery for their alleged attempts to secure City contracts by making gifts to Nuru.
- On November 18th, Paul Giusti, former Government & Community Relations Manager for Recology’s San Francisco Group, was charged with bribery and money laundering for his alleged attempt to secure favorable treatment for Recology by bribing Nuru.

If true, the allegations against these individuals demonstrate an alarming level of unethical conduct in and around City government and its decision-making processes. In response, our office has undertaken efforts on multiple programmatic fronts, both to address these specific allegations and to further strengthen the City’s ethics framework and its effectiveness in preventing similar incidents in the future.

Current Work Underway

In furtherance of the Commission's mission is to practice and promote the highest standards of integrity in government, Commission staff work to achieve that by delivering impactful programs that promote fair, transparent, and accountable governmental decision making for the benefit of all San Franciscans. With public service a public trust, our aim is to ensure that San Franciscans can have confidence that the operations of the City and County and the decisions made by its officials and employees are fair, just, and made without any regard to private or personal gain.

A. Enforcement

To fulfill the Ethics Commission's oversight mandate as an independent administrative enforcement agency, the Enforcement Division is charged with ensuring fair, thorough, and timely investigations and case outcomes that serve as an effective deterrent and promote accountability in government. The Division has responsibility to identify, investigate, and remedy unlawful conduct within the scope of the Commission's jurisdiction. The Division investigates alleged violations of the law, including state and local ethics laws, to ensure allegations are fully and objectively evaluated and that those who violate the law are held publicly accountable for their actions, which can include imposition of monetary penalties levied by the Commission as provided for under the law. Effective enforcement is central to the City's ethics framework because those who are subject to ethics rules must know that violations will be punished.

Under the City Charter, ethics investigations must be conducted confidentially. Accordingly, the Commission may neither confirm nor deny that it is investigating specific individuals or allegations. This feature of ethics enforcement protects the due process interests of potential respondents and preserves the neutrality and objectivity of the Commission's administrative enforcement functions. These functions include the Executive Director's determination regarding whether probable cause exists (subject to Commission ratification) and the Commission's determination as a body as to whether a violation exists, either through settlement or a hearing on the merits.

Commission staff may nevertheless acknowledge that many of the allegations that have recently been made public describe facts that, if true, indicate potential violations of state and local ethics laws that are within the Commission's jurisdiction. As such, Enforcement staff are reviewing the public documents that have been released by the US Attorney's Office and others to evaluate to what extent local and state ethics laws are implicated and assess whether enforcement actions by the Commission may be warranted. Any enforcement matters that result from this effort would be undertaken confidentially until such time that any matter were brought to the Ethics Commission for action in a public meeting.

It is relevant to also note that Enforcement Staff meet weekly with counterparts from the Controller's, City Attorney's, and District Attorney's Offices to review complaints as they come in to coordinate which agencies are best situated to address allegations given limited City resources and in the interest of avoiding any duplication of effort. Additionally, as Commissioners are aware, before the Enforcement Division may proceed with an investigation it must, under current Charter provisions, refer matters to the City Attorney and District Attorney for those offices' consideration. As noted in this month's Enforcement Report, the Commission's [Investigation Suspension and](#)

[Parallel Proceedings Policy](#) governs instances of overlapping jurisdiction and provides that the Ethics Commission may permit the City Attorney or District Attorney to assert primary jurisdiction over alleged wrongdoing.

Lastly, staffing and hiring inevitably impact the Enforcement Division's efforts on this front. Disaster Service Worker (DSW) requisitions for staff to support the City's COVID response have effectively reduced both investigative staff and auditing staff by one third for at least the past six months. As long as that remains the case for Enforcement, our office's ability to undertake new investigations will be affected. However, the Commission was authorized in the FY21 budget to proceed with backfilling a vacant [Investigator position](#), and we are actively working to recruit applicants for that position so that we can onboard that new Investigator in the first calendar quarter of 2021. Having Enforcement fully staffed will be essential to allow the Division to more fully and efficiently pursue all investigations that are being opened.

B. Policy and Legislation

As the Commission is aware, the Policy division is currently undertaking a comprehensive review of the City's ethics and conflict of interest laws to ensure that those laws and related programs are strengthened to deter similar unethical conduct in the future. The project seeks to learn from all facts that emerge from the various investigations, assess to what extent improvement to laws or programs could help prevent future similar incidents, develop those laws and programs and pursue their enactment, and assist other Staff to implement new laws and programs.

Currently, this project is in its first phase. At its November 13, 2020 Regular Meeting, the Commission voted unanimously to support legislation that would prohibit City officers and employees from soliciting behested payments from interested parties.¹ Policy is currently seeking enactment of the new law through the Board of Supervisors. Prior to the Commission's vote, Supervisors Haney and Peskin had already introduced legislation that contains a substantially similar rule. Policy will pursue the approval that that ordinance, subject to amendments to conform it to the Commission's full recommendation. Likely owing to the election and the approaching end of the Board's legislative session, there has not yet been a hearing date scheduled for the ordinance. But, Staff has met with legislative aides from other Supervisors' offices to inform them about the ordinance and to seek support. Staff also transmitted the November 9, 2020 staff report on behested payments, with a cover letter detailing the Commission's vote, to the Clerk of the Board for inclusion in the file for the ordinance.

The second phase of the project is under development and will commence once the first phase is completed. The second phase will focus on gift rules and related conflict of interest laws. As with the first phase, the second phase will involve interested persons meetings, community outreach, research, analysis, a report of findings and recommendations, and legislative affairs work to pursue enactment of any new laws. Subsequent phases of the project will be undertaken as appropriate.

¹ The agenda materials for this agenda item are available at <https://sfethics.org/wp-content/uploads/2020/11/2020.11.13-Agenda-Item-6-COI-Project-Memo-Phase-1-FINAL.pdf>.

Upcoming hiring will be essential to the Policy Division's ability to fully undertake this work. The Commission was authorized in the FY21 budget to proceed with backfilling a vacant Policy Analyst position. As with the Investigator position, we are actively working to recruit applicants for the [Policy Analyst position](#) so that we are able to have this position filled in the first calendar quarter of 2021. Having a dedicated Policy Analyst on board is essential to allow us to deepen our research into ethics issues that are being surfaced through the ongoing investigations.

C. Engagement and Compliance

A critical feature of the Commission's work is to educate City officials and employees about their ethical obligations and to help them ensure that they comply with the law. Relatedly, the Commission also administers many disclosure programs, including the Form 700 Statement of Economic Interests, that provide the transparency needed to prevent conflicts of interest. This facet of the Commission's work is also being leveraged to address the recent corruption allegations.

First, Staff are continuing to move forward with the full conversion to electronic filing of the Form 700. Currently, only elected officials, members of boards and commissions, and department heads file the form electronically, while designated employees file the form on paper. The advent of universal e-filing will vastly improve the availability of Form 700 data and can also improve compliance rates by making non-compliance much easier to detect and address. This project increases transparency and avoids conflicts by making employees' personal financial interests more visible to the public.

In furtherance of the Form 700 e-filing project, the Commission is hiring an e-filing Client Support Specialist to help make the transition process as smooth and effective as possible. The Client Support Specialist will serve as a front-line staff person to provide direct filer assistance, technical support, compliance guidance, and user training in connection with the Form 700 public disclosure program, as well as other Commission programs. We are actively working to recruit applicants for the [Client Support Specialist position](#) with a targeted start work date also in the first quarter of calendar year 2021.

Aside from improving the Form 700 disclosure program through expanded e-filings, Staff will also continue to seek fundamental change in how ethics outreach and training is approached in the City. Moving forward, we believe that regular exposure to ethics in government needs to be a part of onboarding, supervisory training, and leadership development and support for all city employees. We will continue to pursue the creation of a comprehensive training program, which we are calling *Ethics@Work*, to achieve that goal. As envisioned, this program is designed to ensure a dedicated ethics training program administered by the Commission with components that can be tailored to support particular needs identified by individual City departments and through methods that will be most impactful for their staff.

The need to rethink how the City approaches ethics training is clear in the wake of this year's pattern of corruption allegations. The Controller's Office Public Integrity reports have repeatedly cited a poor "tone at the top" in City leadership regarding government ethics. Changing that tone will require changing a feature of the City's institutional culture, which will necessarily involve regular and comprehensive outreach and collaborative action to support departmental staff across all levels who are committed to seeking and leading that change. Currently, very few City

employees are subject to the ethics training requirement, which applies only to executive level personnel and employees responsible for contracting or purchasing. Changing the tone at the top requires that all employees are equipped with an understanding of the City's ethical standards to help ensure broad and consistent accountability to those standards in practice.

By delivering tailored ethics trainings to a broad base of City employees, *Ethics@Work* will (a) equip the next generation of City leaders with essential knowledge and skills to practice ethical and accountable decisions and actions now, and not solely when they are promoted to higher positions; (b) build a shared commitment to ethics throughout all levels of the City organization chart, and (c) ensure all employees are able to recognize, avoid engaging in, and report unethical conduct when they see it.

As our prior budget submissions have underscored, this program is a desperately needed investment in the City's future, and Staff plans to continue to pursue funding necessary to institute a comprehensive training program. Without investing sufficiently to support and strengthen a workforce that broadly understands and values governmental ethics in practice, the City will guarantee that further ethics scandals will take root and continue to emerge in the future.

D. Form 700 Compliance Reviews

In its second Public Integrity Report, the Controller's City Services Auditor recommended that the Commission engage in annual Form 700 compliance reviews as a way for the Commission to proactively monitor compliance with the economic interest public disclosure requirements of city officials and designated filers. Compliance reviews will be technically feasible once the conversion to e-filing, as discussed in Section II.C, is complete. After designated City employees are required to file the form electronically using the NetFile disclosure platform, Staff will have access to the filing, whereas previously the filings only existed in paper format within the filers' respective departments.

The work to build the Form 700 compliance review program, however, also requires the hiring of the Commission's Audit and Compliance Review (ACR) Manager. Embedded in the Audits program area, this post-filing compliance review program and the development of its parameters, process, and deliverables, will be led by the ACR Manager.

In its FY21 budget, the Commission was authorized to backfill a vacant Audit Program Manager position. Updated to reflect the need to establish additional post-compliance review approaches, the Audits and Compliance Review Manager position also will have primary responsibility for the Form 700 and other post-filing compliance reviews. As with other positions currently in active recruitment, we are actively working to have the [Audits and Compliance Review Manager position](#) filled in the first calendar quarter of 2021. Having the ACR Manager position filled is critical to enable systemic reviews that promote transparency and accountability to prevent the very issues that are being surfaced through the ongoing corruption allegations discussed above.

E. Data Disclosure and Analysis

Public disclosures allow the public to hold government accountable by making critical information widely available. With online disclosure tools, access to filed information is more readily available

than ever. Continuing this work is an important way for the Commission to reduce conflicts of interest and create an institutional commitment to ethics. In February, staff released the contents of all Form 700 filings by elected officials, board and commission members, and department heads for the past five years as a dataset on the City's open data portal which allows the public to conduct more comprehensive searches and reviews of the disclosures. The dataset is designed to update nightly with the latest filings from public officials and will include designated filers when they begin to file electronically in 2022.

Additionally, Staff are continuing their work on developing and refining tools to interpret and summarize public disclosures for easier public consumption. An example of how this work has been successful in the past is the campaign finance data dashboards.² The advent of an application programming interface (API) for ethics and campaign finance data will further allow staff and the general public to develop tools to automatically interpret and display data. This work is undertaken with the goal of helping to promote awareness, deepen understanding, and prompt further questions about the Commission's disclosure programs. It will help the public help us identify where there may be gaps in reporting or potential violations of ethics laws that indicate the need for further inquiry or investigation. Under Agenda Item 10, Tyler Field will demonstrate a new dashboard to search and summarize campaign contributions directly from the City's open data portal that will create new opportunities for the public to interact with public disclosures.

F. Media Relations and Public Engagement

A major piece of our day-to-day work is to help promote understanding and awareness of the laws and of tools that we make available to help equip the public for the active role they play in ensuring accountable government. This aspect of the Commission's work involves regularly engaging with the media, including contributing context for news stories covering allegations that emerge publicly. Our office works regularly to provide subject matter expertise as a resource to help inform and support accuracy in reporting, and also lending perspective and a voice, where appropriate, to discussions happening around corruption and ethics.

Although confidentiality bars us from speaking about specific allegations that could come before the Commission, when allegations arise it is vital that journalists find our office a useful resource for timely and accurate information about the law and for context and background on the policy purposes behind the law. We also work to share updates regarding policy matters, including the Commission's recent vote regarding behested payments, and we will continue to actively do that as our work as a Commission continues on these important issues.

Relatedly, our [website](#) is a primary tool that we use to help direct the public toward existing disclosure tools and information they can use to learn more about issues and topics that have been referenced in recent news accounts.

For example, the main web page or "banner" was updated most recently to direct viewers to the various types of public disclosures that City officials are required to file. Its message is designed to underscore the value of transparency in government and remind viewers of tools that empower

² The campaign finance data dashboards are available at <https://sfethics.org/dashboards>

them to help hold government accountable. The “Learn More” tab takes viewers to a [landing page](#) that is designed to be a one-stop location to link directly to Form 700 filings of city officials, behested payment reports ethics training certifications gifts of travel reporting, and recusal notifications. The page also includes links to other public disclosure filings, such as those for permit consultants, major developers, and lobbyists.

Importantly, we also remind visitors to this page about our role in investigating alleged violations of the law, [how to file a complaint](#), and of whistleblower retaliation protections for City officers, employees, contractors, and employees of contractors for engaging in protected whistleblower activity.

Conclusion

Anytime corruption allegations emerge, it is troubling to the public and to the vast majority of City officials and employees, who work diligently in the public interest and take government ethics seriously. It also exacts a steep cost on the public’s faith in the effectiveness of government to develop and deliver fair, just, and effective solutions to society’s most complex problems. When these unfortunate episodes emerge as they have continued to in 2020, our office has a paramount duty to seize them as opportunities to pinpoint where current ethics laws and programs could be strengthened to prevent future incidents, and to do our part in working diligently to restore the public’s trust. As we move into 2021, Commission Staff commit to working across all program areas to do exactly that. The steps outlined in this report summarize the initial outlines of our approaches, and we will continue to keep the Commission and the public apprised of further work undertaken toward this goal, primarily through regular staff reports, policy memoranda, and periodic agenda items to present distinct projects. As we do, we look forward to the contribution of insights and feedback from both the Commission and the public.