



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

NOREEN AMBROSE
CHAIR

March 8, 2021

YVONNE LEE
VICE-CHAIR

To: Members of the Ethics Commission

DAINA CHIU
COMMISSIONER

From: Jeff Pierce, Director of Enforcement

LARRY BUSH
COMMISSIONER

Subject: **AGENDA ITEM 5: Enforcement Report for the March 12, 2021 Meeting**

JAMES BELL
COMMISSIONER

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

LEEANN PELHAM
EXECUTIVE DIRECTOR

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

Programmatic Updates

Public Corruption Update: Recology

On March 4, 2021, the City Attorney's Office [announced](#) that as part of its ongoing public corruption investigation the City has reached a settlement with Recology San Francisco, the sole contractor overseeing the City's waste and recycling collection. As the City Attorney noted in its press release, Recology was among the 24 companies, nonprofits, and individuals the City Attorney's Office [subpoenaed](#) in February 2020 in connection with the public corruption allegations first revealed with the federal arrest of former Public Works Director Mohammed Nuru.

According to the [complaint](#) the City Attorney filed against Recology on Thursday, March 4 in San Francisco Superior Court, Recology violated the state's unfair competition law (California Business and Professions Code section 17200 et seq.) and the City's Government Ethics Ordinance (SF Campaign & Governmental Conduct Code section 3.216, subsections (a) and (b)).

Specifically, the complaint asserts that Nuru regularly solicited funds from Recology for his own benefit and that of City employees, in violation of the City's restricted source rule. It further asserts that between 2017 and 2020 Recology regularly provided gifts of money, meals, and accommodations to City officers and employees with the intent to influence City decisions impacting Recology, in violation of the City's bribery prohibition. Additionally, the complaint asserts that Recology concealed some of its unlawful gifts by disguising them as charitable contributions, with the intent that Nuru and former City

Administrator Naomi Kelly would direct and control the use of those payments for employee holiday parties which Nuru and Kelly would host.

The complaint further highlights that the improperly cozy relationship between Nuru and Recology resulted in Nuru's taking – and omitting to take – official actions that were favorable to Recology and unfavorable to the public. Namely, the complaint asserts that Nuru recommended to the City's Refuse Collection and Disposal Rate Board that the Board allow Recology to increase the dumping fees (also known as "tipping fees") it charges San Francisco residents, businesses, and City entities for waste management services in an amount twice what it should have, resulting in substantial overcharging of the public and substantial overpayment to Recology over a four-year period. According to the complaint, Public Works staff discovered the discrepancy in mid-2018, but after conversations between Recology and Public Works that took place in December 2018, the department under Nuru's direction took no action to publicly disclose the error or to correct the overcharges.

Under the terms of the settlement announced last week, Recology will reimburse ratepayers \$94.5 million in overcharges and interest. Starting April 1, 2021, Recology will likewise reduce residential and commercial refuse rates for an additional savings to ratepayers of \$6.1 million over a three-month period. Finally, Recology will make an additional \$7 million payment to the City for its violations of the state's unfair competition law and the City's prohibitions against bribery and gifts from restricted sources.

In addition to those terms of settlement, the parties have stipulated to an injunction before San Francisco Superior Court that prohibits Recology, over a four-year period, from making any gift to any City officer or employee and from making any contribution to a nonprofit at the behest of any City officer or employee (so-called "behested payments," which are otherwise lawful under Article III, Chapter 6 of the Campaign & Governmental Conduct Code). The injunction will also require Recology to: (1) disclose any contribution of \$1,000 or more to any local nonprofit; (2) comply with City law governing lobbyists; (3) report all contacts with City officials involved in rate-making; and (4) disclose material mistakes or errors in any rate-making or rate-reporting document submitted to the City.

The findings identified in the complaint before San Francisco Superior Court are consistent with [charges](#) that the U.S. Attorney brought in November 2020 against Paul Giusti, then the Government & Community Relations Manager for Recology San Francisco. The U.S. Attorney's criminal complaint charged Giusti with bribery and money laundering. Specifically, the federal complaint alleged that Giusti arranged for Recology to provide to Nuru "a stream of benefits" worth more than \$1 million with the intent of influencing Nuru in his official actions in his role regulating Recology. In addition to the unlawful gifts described above, the U.S. Attorney alleged that Recology's scheme to influence Nuru included providing a job for Nuru's son at Recology and, after the employment was discovered, an internship for Nuru's son at a nonprofit, for which Recology continued to pay Nuru's son in the form of a generic grant.

Among the members of the City Attorney's Office who worked on the Recology matter are Deputy City Attorney Keslie Stewart, the Head Attorney for the City Attorney's Public Integrity Unit, and Deputy City Attorney Andrew Shen, the Head Attorney for the Ethics and Elections team who

regularly advises the Ethics Commission. At the Commission’s meeting on March 12, Deputy City Attorney Shen will address the Commission regarding the settlement with Recology.

Streamlined Administrative Resolution

Enforcement Staff have reviewed the existing open investigations docket for allegations that might be resolved under the new Streamlined Administrative Resolution Program. Senior Investigator Eric Willett – who will principally administer the SARP program – has begun to assess the general and specific eligibility guidelines for those matters. In addition, Enforcement Director Jeff Pierce – who conducts complaint intake – has begun assigning new matters under preliminary review to either the streamlined or the mainline program.

In addition, Enforcement Staff will meet on Wednesday, March 10, with counterparts in the City Attorney’s and District Attorney’s Offices to review with them a proposed approach to Charter-mandated referrals in the context of the new Streamlined Administrative Resolution Program (SARP).

Finally, Enforcement Staff, in consultation with other Commission staff, have begun to develop forms and processes by which to implement the streamlined program.

Docket Updates

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

Table 1 – Number and Average Age of Matters in Preliminary Review

Month	February 2020*	December 2020**	March 2021
Number	54	39	39
Avg. Age (mo.)	5.5	10.9	11.0

Table 2 – Number and Average Age of Matters in Open Investigation

Month	February 2020*	December 2020**	March 2021
Number	95	67	57
Avg. Age (mo.)	18.3	20.8	21.1

*The Commission held no meeting in March 2020.

**The Enforcement Division last assessed and reported these figures at the Commission’s regular meeting in December 2020.

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

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Investigative Holds

Under San Francisco Charter section C3.699-13(a), whenever the Commission has reason to believe that a law within its jurisdiction has been violated it must forward a complaint and any relevant information to the City Attorney and District Attorney for their review. The Enforcement Division’s practice has been to forward the results of any preliminary investigation and analysis to those offices, along with the underlying complaint, if any. Since Enforcement Staff last reported to the Commission in December 2020, the Enforcement Division has referred two new matters to the City Attorney and District Attorney.

In January 2017, the Commission adopted the [Investigation Suspension and Parallel Proceedings Policy](#). That Policy governs instances of overlapping jurisdiction. In relevant part, it provides that when the City Attorney or District Attorney requests that the Ethics Commission suspend administrative investigation, the Commission’s Enforcement Division will place an investigative hold on a matter for a period of 90 days. After those 90 days, the Enforcement Division may move forward with its investigation “unless the Executive Director determines otherwise.”

The following tables provide information about the status of any investigative matters for which either the City Attorney or District Attorney has indicated it will conduct a civil or criminal investigation.

Table 3 – City Attorney Investigative Holds

1	Type	Ethics
	Length of Hold	25 months
	Statute of Limitations	October 2022

Table 4 – District Attorney Investigative Holds

1	Type	Ethics
	Length of Hold	4 months
	Statute of Limitations	November 2022
2	Type	Ethics
	Length of Hold	6 months
	Statute of Limitations	June 2024
3	Type	Ethics
	Length of Hold	4 months
	Statute of Limitations	September 2024

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Referrals to Bureau of Delinquent Revenue

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 March 8, 2021.

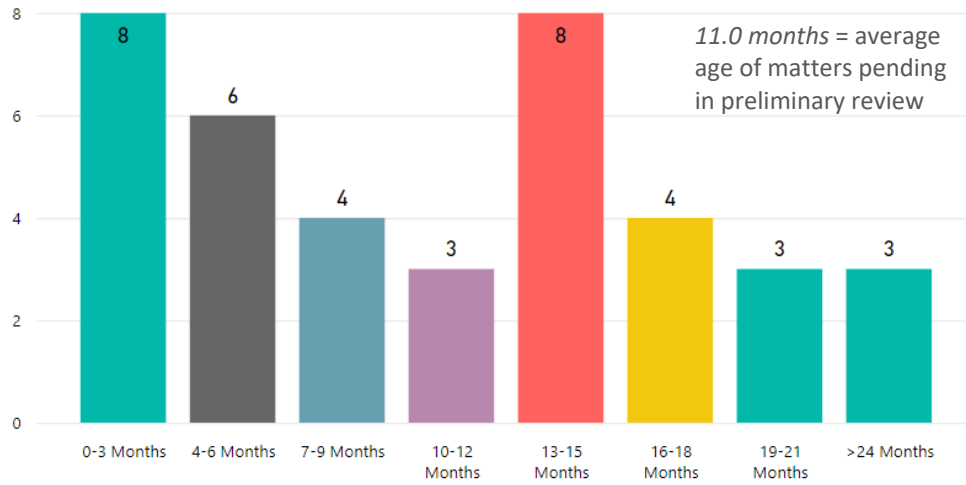
Committee/ Filer	Origin	Treasurer/ Responsible Officer	Referral Date	Original Amount Referred	Current Balance	General Status	Status
Chris Jackson for Community College Board 2012	Campaign finance late fees	Chris Jackson	7/12/13	\$6,601	\$5,101	Judgment	No record of employment. Order of Examination hearing continued by Superior Court for 8/30/2021.
Chris Jackson	Enforcement penalty: on stipulation, failure to file campaign statements; failure to maintain adequate records	Chris Jackson	9/26/16	\$6,100	\$6,100	Judgment	See above.
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 record of employment. Order of Examination hearing continued by Superior Court for 8/30/2021.
Isabel Urbano	Lobbyist late fees	Isabel Urbano	3/23/16	\$7,000	\$6,850	Agency Assignment	Unable to enforce collections (past statute of limitations).
Lynette Sweet	Enforcement penalty: after hearing on the merits, recordkeeping violation in publicly financed race for supervisor	Lynette Sweet	12/29/16	\$74,408	\$32,285	Judgment	Legal Section obtained judgment on 1/14/2021 via Motion to Enforce Settlement Agreement; pending client's input re: next steps.
SF Latino Democratic Club	Campaign finance late fees	Sarah Souza	6/21/19	\$10,979	\$10,979	No response from Debtor	Upon removal of shelter in place order, pending the request for client's approval to send the Small Claims final demand letter.
San Franciscans for Democracy, Yes on D Committee	Campaign finance late fees	Jeremy Pollock	6/21/19	\$1,625	\$1,625	Response from Debtor	Per request of debtor, emailed copy of demand Small Claims suit filed. Hearing date continued by Superior Court until 8/19/2021.
Arlo Smith For Democratic County Central Committee	Campaign finance late fees	Arlo Smith	4/30/2019	\$1,750	\$1,750	Refuse to Pay	No record of employment. Small Claims suit filed. Hearing date continued by Superior Court until 4/15/2021.

Committee/ Filer	Origin	Treasurer/ Responsible Officer	Referral Date	Original Amount Referred	Current Balance	General Status	Status
Jeffrey Ubben	Campaign finance late fees	Jeffrey Ubben	1/28/2020	\$4,975	\$4,975	No response from Debtor	Upon removal of shelter in place order, pending the request for client's approval to send the Small Claims final demand letter.
Joshua Arce for SFDCCC Member 2016	Campaign finance late fees	Andrew Sinn	1/28/2020	\$425	\$425	No response from Debtor	Upon removal of shelter in place order, pending the request for client's approval to file Small Claims suit.
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	Upon removal of shelter in place order, pending the request for client's approval to file Small Claims suit.
Yes on U, Working Families Fighting to Stay in San Francisco	Campaign finance late fees	Matthew Alvarez	1/28/2020	\$675	\$700	No response from Debtor	Upon removal of shelter in place order, pending the request for client's approval to file Small Claims suit.
Yes on P, Competitive Bidding for City Contracts with Funding	Campaign finance late fees	Matthew Alvarez	1/28/2020	\$675	\$700	No response from Debtor	Upon removal of shelter in place order, pending the request for client's approval to mail small claims demand letter.
Bert Polacci	Lobbyist late fees	Bert Polacci	7/24/20	\$450	\$75	Partial payment	Emailed debtor re: \$75 balance.
Total:							\$89,540

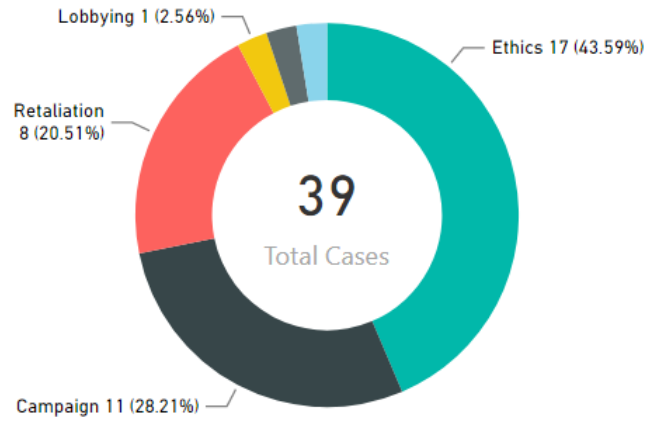
I look forward to answering any questions you might have at the upcoming Commission meeting.

Agenda Item 5, Attachment 1

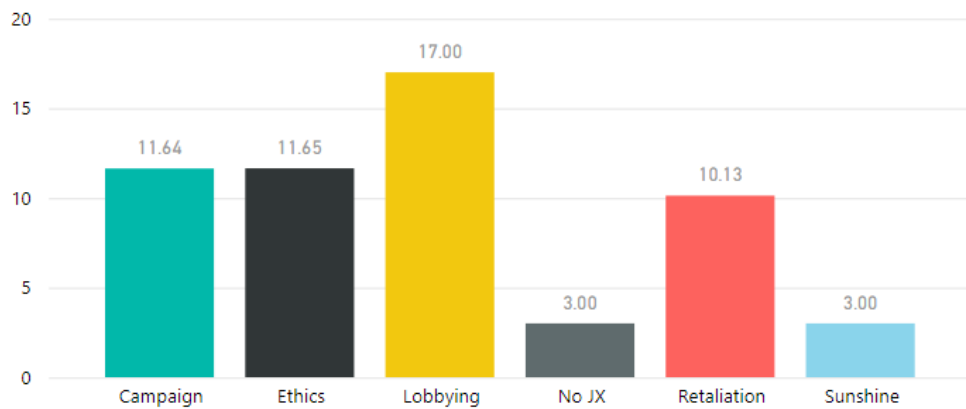
Age of Matters in Preliminary Review



Matters in Preliminary Review by Type

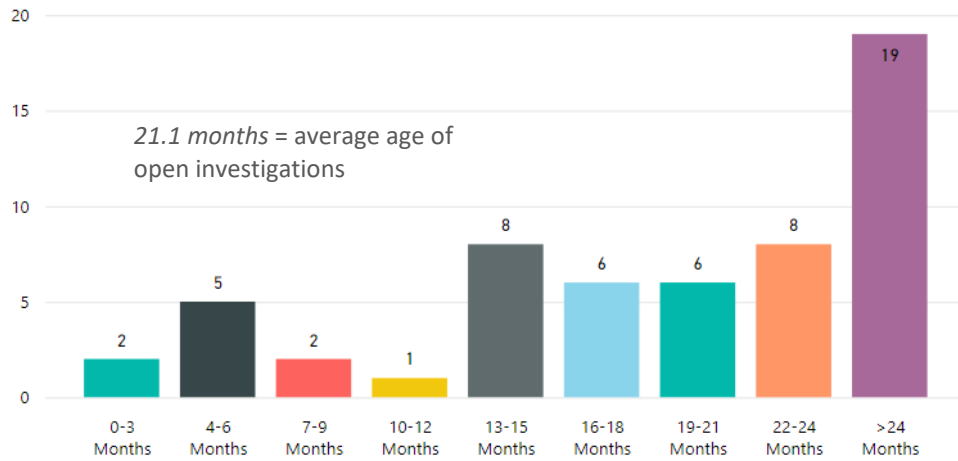


Average Age of Matters in Preliminary Review by Type

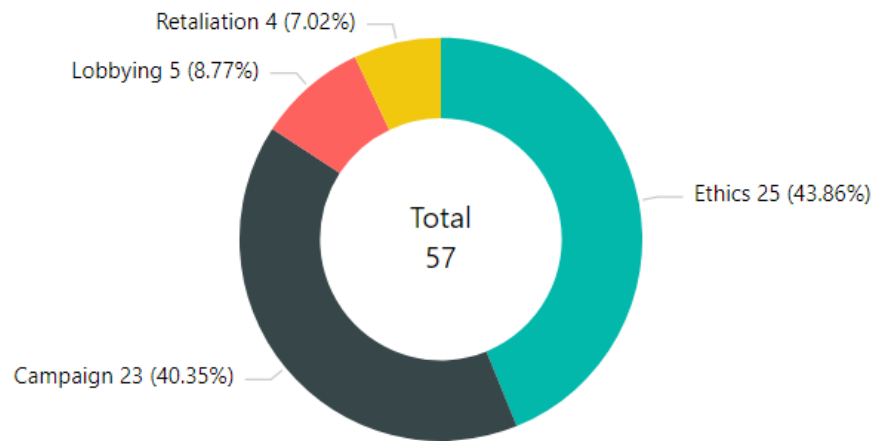


Agenda Item 5, Attachment 2

Age of Matters under Open Investigation



Open Investigations by Type



Average Age of Matters under Open Investigation by Type

