



# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

NOREEN AMBROSE  
CHAIR

June 7, 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 10: Enforcement Report for the June 11, 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

On May 13, 2021, the City Attorney and the Ethics Commission [announced](#) that the City had reached a civil settlement with permit expediter Walter Wong. There, Wong agreed not to contest that he had been improperly awarded numerous contracts and grants from Public Works, the San Francisco Public Utilities Commission, and the City Administrator's Office through a non-competitive process resulting from his corrupt influence of City officials in a scheme that included bribery and kickbacks. Wong further agreed not to contest 12 counts in violation of the Campaign & Governmental Conduct Code for ethics violations under the City's Permit Consulting Ordinance ([SF C&GCC Article III, Chapter 4](#)). As part of the settlement, Wong agreed to pay more than \$1.7 million in penalties, of which \$300,000 represented administrative penalties and late fees for his violations of the Permit Consulting Ordinance, the maximum amount the Ethics Commission might have assessed against Wong had the Commission acted separately from the City's unitary resolution of the misconduct.

The findings identified in the settlement are consistent with [charges](#) that the U.S. Attorney brought against Wong in June 2020. The U.S. Attorney announced then that Wong would plead guilty to conspiracies to commit honest services fraud and money laundering and that he had agreed to cooperate with the federal investigation. In the federal case, Wong was alleged to have conspired with former Public Works Director Mohammed Nuru and others "to defraud the public through a scheme involving bribery, kickbacks, and the concealment of material information." The U.S. Attorney did not

disclose the exact nature of Wong's unlawful conduct, as those facts were filed under seal.

The U.S. Attorney further [announced](#) in November 2020 that it had brought charges against Harlan Kelly, the former General Manager of the San Francisco Public Utilities Commission, alleging that Kelly, together with Wong, had "engaged in a long-running bribery scheme and corrupt partnership." Among other charges, the complaint alleged that Kelly's relationship with Wong "involved coded text messages, multiple international trips paid for or subsidized by Wong, cash exchanges, free meals, and even personal car service provided by Wong or by Wong's employees to Kelly." The U.S. Attorney indicated that Wong provided under his cooperation agreement the evidence of Kelly's alleged crimes.

Deputy City Attorney Keslie Stewart, the Head Attorney for the City Attorney's Public Integrity Unit, negotiated the settlement with Wong. The Ethics Commission was not a party to the litigation. Accordingly, the settlement was not subject to the provisions in Section 12 of the Commission's Enforcement Regulations governing the Commission's role in ratifying stipulated orders. References in the settlement to action that the Commission's Executive Director may take upon execution of the settlement with Wong arise under the Director's exclusive power to dismiss complaints or close investigations under Section 4 of the Enforcement Regulations.

The City's settlement with Wong is subject to the Board of Supervisor's approval. The settlement came before the Board at its meeting on May 18, 2021. At that time the Board referred the proposed settlement to its Government Audit and Oversight Committee. As of the Committee's most recent meeting on June 3, 2021, the Committee had yet to hear the matter.

In addition to the developments regarding Walter Wong, the U.S. Attorney [announced](#) on May 27, 2021, that two more defendants in the federal corruption case involving Mohammed Nuru have pleaded guilty. Alan Varela and William Gilmartin III are the president and vice president, respectively, of ProVen Management, an Oakland civil engineering and construction firm. Each pleaded guilty to bribing Nuru in exchange for inside information that would give them a competitive advantage in seeking contracts with the City. According to the U.S. Attorney's Office, Gilmartin has also agreed to cooperate in the federal investigation.

Varela and Gilmartin admitted to a scheme dating back to 2013 in which they conspired with each other and with contractor Balmore Hernandez to provide Nuru with \$20,000 in lavish meals and a tractor valued at \$40,000 for use at Nuru's Colusa County vacation ranch. In exchange for those bribes, Nuru reportedly worked through Hernandez to provide Varela and Gilmartin with illegal inside information on a contract to build and operate an asphalt recycling plant on land owned by the Port of San Francisco.

The plea agreements come approximately eight months after the U.S. Attorney [filed charges](#) against Varela and Gilmartin, the seventh and eighth defendants charged in the City Hall corruption scandal. On the same day in September 2020 that the U.S. Attorney announced the charges against Varela and Gilmartin, Hernandez pled guilty to having funneled tens of thousands of dollars in labor and materials to Nuru in exchange for assistance obtaining contracts and approvals and agreed to cooperate in the federal investigation. At the time the charges were announced against them, Varela and Gilmartin [reportedly denied](#) the allegations.

Nuru has yet to enter a plea agreement or stand trial.

Streamlined Administrative Resolution

This month’s agenda included three matters resolved through the Commission’s new Streamlined Administrative Resolution Program. The Enforcement Division is currently administering 16 additional matters under the Streamlined Program. Among the other matters Staff are administering, several regard allegedly undisclosed lobbying contacts and payments promised for lobbying activity, several regard allegedly prohibited contributions and expenditures, and several regard potential ethics violations including allegedly undisclosed behested payments and sources of income that were allegedly omitted from Form 700 filings.

Staffing Updates

As noted in this month’s Executive Director’s Report, the Commission is actively working to backfill the senior investigator position that Thomas McClain vacated when he accepted a position with the department that had sponsored his disaster service work deployment. The application window closed June 2 and Staff will begin to review the materials of candidates deemed eligible as they become available.

Fiscal Year Review

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 2021 is provided below, along with a comparison to those same data from the two prior fiscal years.

**Table 1 - Enforcement Data for Fiscal Years 2019, 2020, and 2021**

Fiscal Year	Complaints received	Complaints dismissed for lack of jx* or handled via Consultation & No Further Action protocol**	Preliminary reviews completed	Matters dismissed or referred	New investigations opened	Investigative matters resolved	Found probable cause did not exist	Investigative matters closed via admin. discretion	Investigative matters settled	Penalties assessed
FY19	83	*30	108	74	34	22	8	7	7	\$34,000
FY20	81	**45	75	55	20	48	15	27	8	\$25,000
FY21	39	**36	50	36	15	36	7	24	9	\$20,170

\* The 30 complaints identified here as being outside the Commission’s jurisdiction are a subset of the 83 complaints received that year.

\*\* The complaints identified in FYs 20 and 21 as having been administered through the Commission’s newer Consultation and No Further Action protocol are in addition to the complaints received during those years.

Notably, during each of the last two fiscal years the Commission has resolved more than twice as many investigations as it has opened, resolving 84 matters in comparison to the 35 investigations initiated across that two-year period. The Commission will continue to implement its Case Closure Plan to ensure that it allocates resources most effectively and minimizes the risk that investigations will unduly age.

Docket Updates

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

*Number and Average Age of Matters in Preliminary Review*

Month	July 2020*	March 2021	June 2021
Number	42	39	28
Avg. Age (mo.)	7.3	11.0	10.7

*Number and Average Age of Matters in Open Investigation*

Month	July 2020*	March 2021	June 2021
Number	67	57	46
Avg. Age (mo.)	19.6	21.1	19.6

\*The Commission held no meeting in June 2020.

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

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 March 2021, the Enforcement Division has referred six 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.

*City Attorney Investigative Holds*

1	Type	Ethics
	Length of Hold	2.5 years
	Statute of Limitations	October 2022

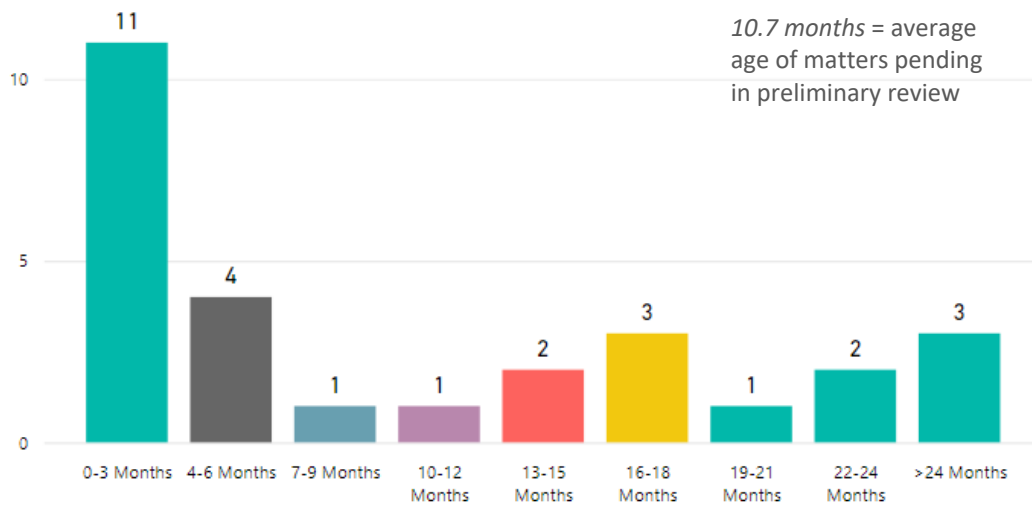
*District Attorney Investigative Holds*

1	Type	Ethics
	Length of Hold	7 months
	Statute of Limitations	November 2022
2	Type	Ethics
	Length of Hold	1 month
	Statute of Limitations	April 2024
3	Type	Ethics
	Length of Hold	9 months
	Statute of Limitations	June 2024
4	Type	Ethics
	Length of Hold	7 months
	Statute of Limitations	September 2024

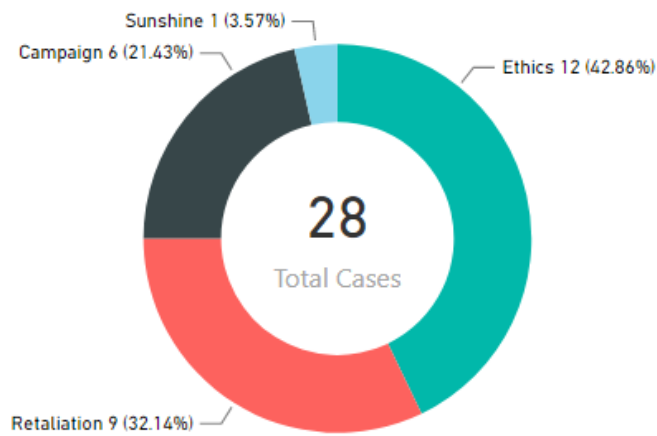
I look forward to answering any questions you might have at the upcoming Commission meeting.

## Agenda Item 10, Attachment 1

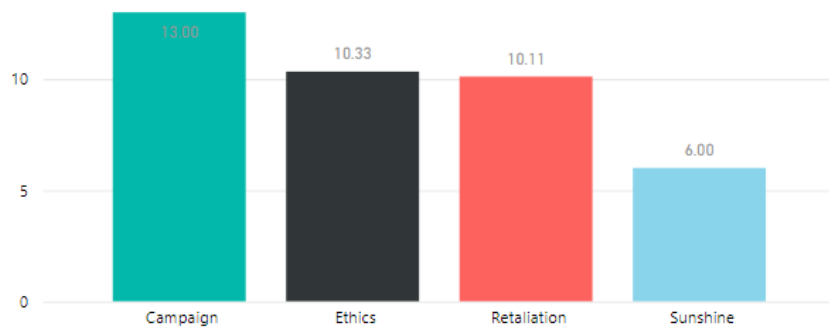
Age of Matters in Preliminary Review



Matters in Preliminary Review by Type

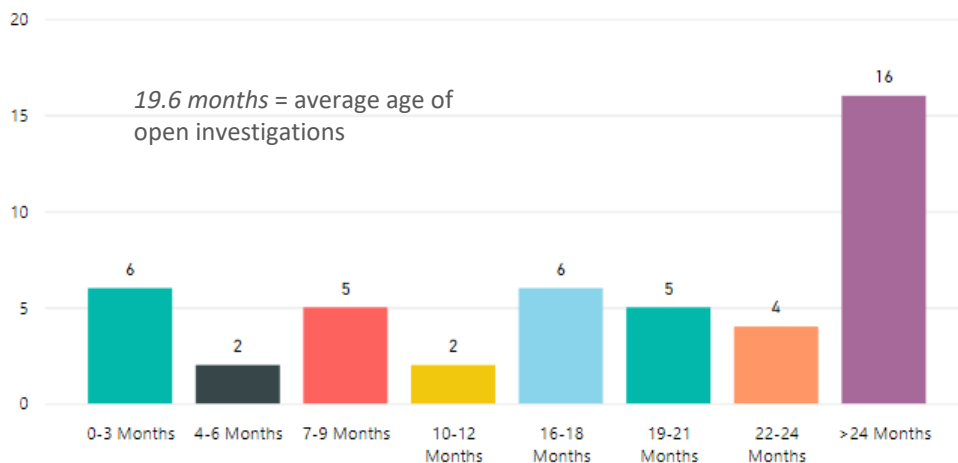


Average Age of Matters in Preliminary Review by Type

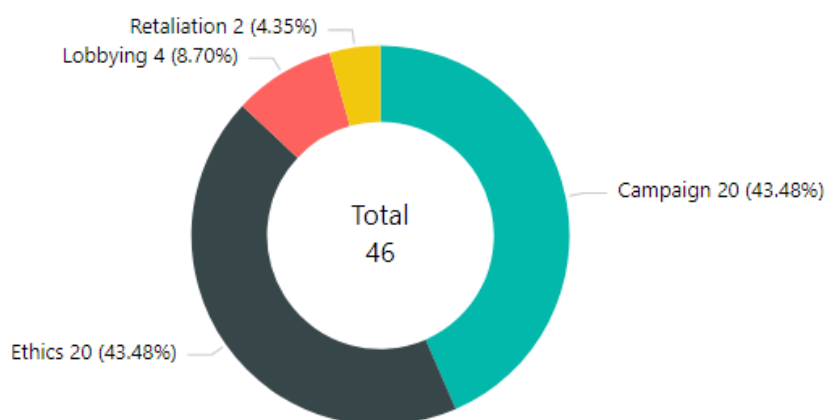


## Agenda Item 10, Attachment 2

Age of Matters under Open Investigation



Open Investigations by Type



Average Age of Matters under Open Investigation by Type

