

From: [Pelham, Leeann \(ETH\)](#)
To: [Bush, Larry \(ETH\)](#)
Cc: [Ambrose, Noreen \(ETH\)](#)
Subject: FW: Recommendations for Friday Commission meeting
Date: Thursday, July 8, 2021 6:12:00 PM

Hi Larry, also forwarding this to your ETH in box as I'm not sure which one you might be accessing before tomorrow's meeting.

See you then,
lap

From: Pelham, Leeann (ETH)
Sent: Thursday, July 8, 2021 6:11 PM
To: LARRY BUSH <[REDACTED]>; Ambrose, Noreen (ETH) <noreen.ambrose@sfgov.org>
Subject: RE: Recommendations for Friday Commission meeting

Hi Larry,
Adding my notes and responses to the feedback you provided below on the Annual Report in yellow highlighted text for ease of reference.

FYI, I've deleted here for space saving the first part of your message on redistricting comm that I answered in a separate email.

From: LARRY BUSH <[REDACTED]>
Sent: Tuesday, July 6, 2021 12:01 PM
To: Ambrose, Noreen (ETH) <noreen.ambrose@sfgov.org>; Pelham, Leeann (ETH) <leeann.pelham@sfgov.org>
Subject: Recommendations for Friday Commission meeting

...

On the Annual Report:

**“And to ensure that a culture of ethical conduct flourishes again”
SF has never had a flourishing culture of ethical conduct” and its one of the reasons why the
Ethics Commission was created — and why we have the charter we have or why SF exists in its
place. At best it ca be said that a desire for ethical conduct g=has existed.**

If the Commission wishes to reflect that perspective it could amend the sentence as shown below in stricken text:

We are also committed to engaging with the public and the City's workforce to assess the weaknesses that allowed corruption to take root, and to provide training and support to ensure that a culture of ethical conduct flourishes, again.

The proposed report does not specify the weaknesses, vulnerabilities and loopholes that exist. No mention that corruption cases center largely on development and city agencies involved in land use. This is critically important and relates to Peskins legislation that took aim at that as well as its Attorney on Major Developers

The Corruption issues that prompted the commission's prioritization of its conflict of interest policy project re addressed at the outset of the section on "Strengthening Laws and Heightening Awareness" that begins on page 9.

See 4th paragraph on page 9:

Staff presented a **comprehensive report** to the Commission at the November 2020 meeting, discussing the ethical problems associated with behested payments, which are payments made at the behest of a government official or employee. The report directly responded to some of the most troubling allegations to emerge from the federal probe. In light of the report's findings, the Commission approved legislation that will prohibit most City officials and high-level City employees from soliciting behested payments from persons who have business before them.

The discussion continues onto page 10 through a description of the controller's assessments.

Legislation developed by the Commission and adopted in the coming year would be reported in the Annual Report for FY22.

Separately, improved public disclosure tools for use by the public that the Commission implemented this year to better understand and research lobbying and permit consultant activities are described starting at the top of page 16.

Charts:

No mention of time to investigate and resolve complaints as documented in BLA audit

See page 19, which notes:

The Enforcement Division continued operationalization of the discretionary factors that the Commission adopted in August 2019 that govern the Enforcement Division's review of complaints and prioritization of investigative resources. Also, as recommended in the BLA Audit, the Division adopted an **FY21 Case Closure Plan** in December 2020. That Plan identifies the Division's processes and considerations to (a) increase the Division's case closure rate relative to the number of investigations opened, (b) resolve investigations that are more than two years old, and (c) establish goals for resolving whistleblower protection matters.

See page 19, which notes:

Overall, during FY21, the Commission closed 40 investigations and initiated 16. That trend is consistent with practices established during the prior fiscal year, during which the Commission resolved 50 investigative matters and initiated 20 new investigations. As of June 30, 2021, 19 matters were undergoing preliminary review to determine whether they should be converted into formal investigations, referred to another agency’s jurisdiction, or otherwise be dismissed. Another 44 matters remained at various stages of formal investigation. The Enforcement Division tracks various metrics in evaluating its efforts to fulfill the Commission’s enforcement mandate. Some of those metrics for FY21 are provided in the chart below, along with a comparison to those same data from the prior fiscal year.



See page 20, which notes:

“To provide improved accountability for various common violations of City law while reducing the amount of time and resources necessary to resolve those matters, in February 2021 the Ethics Commission unanimously adopted a significantly expanded version of its existing Fixed Penalty Policy as part of a new Streamlined Administrative Resolution Program. The [Revised Fixed Penalty and Streamlined Administrative Resolution Program](#) will operate initially as a pilot program and staff will subsequently report on the program’s experience and any proposed enhancements. By establishing standardized methods, timeframes, and penalty formulas for resolving an expanded range of matters within the Commission’s jurisdiction, the new Streamlined Resolution Program enables more routine violations to be resolved quicker while requiring fewer investigative resources.”

No mention of whistleblower cases and resolutions

See Section of report entitled “*Whistleblower Protection*” beginning on page 20 and ending on page 22.

No mention of referral’s from Sunshine Task Force

That is correct.

No mention of referrals to city attorney and district attorney

See chart on page 19 – it is my understanding that these referrals are embedded in the “complaints referred” figure. We can add specific reference in the final report text to the number of referrals to those specific offices if the Commission would find that helpful.

References to transparency make no mention of failure to provide timely posting on our web pages re: lobbyists, audits, dashboards for campaigns

See the discussion of these issues on page 16, that addresses what we did with regard to these tools in FY20:

“Throughout the year staff assisted these filers to timely complete their registration requirements and file required disclosure reports. Staff provided compliance support by addressing filers’ questions, managing filer accounts in the e-filing system, sending out reminder notices to filers with pending requirements, providing technical assistance to filers to submit their reports, tracking registration fee payments, and terminating inactive filers. This year staff also designed and launched a brand new **Permit Consultants Dashboard** on the Commission’s website which provides an easy and user-friendly way for the public to search for information regarding payments promised to permit consultants by their clients and the campaign contributions made by permit consultants and their employees.

Staff also completed a multi-year project to implement significant enhancements to the lobbyist electronic filing application and public access portal. In addition, the project to develop a lobbyist data application programming interface (API) that will enable the Commission to provide lobbyist data to the public on the City’s open data portal, DataSF, is complete. Staff is in the process of integrating the API with the DataSF portal.

As also discussed in this report section on Audits, as the fiscal year came to a close, steps to implement recommendations of the BLA audit to conduct a lobbying audit were being operationalized, including development of lobbying audit workplans and Audit Division procedures, as staffing levels resume to their prior full capacity in FY22.”

If the Commission believes adding a discussion or modifying the language to reflect the status of these disclosure posting areas *prior* to the improvements cited, the report can be modified and likely lengthened accordingly.

No mention of public engagement measured by submitted comments, or participation in commission public comments, IP meetings, increase or decrease in IP email list.

Please see references to IP meetings:

in paragraph 3 on page 9 in discussion of ethics policy review process;

in bottom paragraph of page 9 under discussion of April 2021 of gift law revisions project;

and

in second paragraph under section entitled “Business Continuity during COVID-19”

Analysis, prioritization, and reporting on organizational metrics, such a size and expansion of emailing lists, public comment received, other program progress indicators, etc, will be a part of work we undertake beginning in Fy22 with new Program Performance and Reporting Analyst we will be hiring.

No mention of inequality goals set and met,

See pages 25 and 26.

By this question I understand you to be asking about our Racial Equity Action Plan and the equity-related goals we identified in that document last December.

The Annual Report discusses our Racial Equity plan on pages 25 and 26. Included in that discussion is a link to our [Racial Equity Action Plan web page](#), which provides a direct link to our [32-page Plan](#) and the seven substantive sections that detail actions and objectives.

As noted in my ED report this month, we have been working with our DHR Client Services Consultant to develop potential next steps on several goals identified in Plan. Action items related to Hiring and Recruitment will continue to be incorporated as we implement our FY22 Hiring Plan. We plan to provide a further status report to the Commission as of the first quarter of FY22 in October.

If I have misunderstood your question, please do let me know.

No mention of number of staff with language facility or public engagement in languages other than English

We can certainly explore where the appropriate place would be for including this kind of information in future reports.

Prioritize review and strengthening of ethics laws — did not do this. Permit expeditors, Section 803 filings, slate mailers, state regs on land use officials, dark money and committees are not mentioned.

Prioritizing the review and strengthening of ethics laws was adopted as a Commission priority in September 2020 and has been the primary focus of the Policy Unit since that time.

As discussed on our [Policy Issues web page](#):

- Staff is undertaking the project in multiple phases. The first phase focusses on behested payments, which are payments made by someone at the request of a public official or employee, usually to a nonprofit organization. Staff's findings and recommendations for this phase of the project are set forth in the [staff report](#) presented at the Commission's November 13^h meeting. Following the presentation of the report, the Commission voted unanimously to recommend legislation prohibiting City officials and employees from soliciting behested payments from persons with business before their respective departments. Staff is currently seeking approval of this legislation by the Board of Supervisors.
- The second phase of the project focuses on gift rules. State and local law restricts gifts made to City officials and employees. The ongoing corruption investigations have brought to light potential issues with

these gift laws. Staff will hold two interested persons meetings to seek guidance and feedback from stakeholders. The meetings will be held on April 27th at 12 p.m. and April 29th at 3 p.m. More information is available [here](#). Staff will then conduct research into ethical issues involved with gifts and draft a report containing findings and recommendations, which will be presented to the Commission at a public meeting.

- Subject to future developments in the corruption investigations, including further criminal charges against City officials and contractors and additional reports issued by the Controller's office, Staff will initiate further phases of the project as appropriate.

Fact patterns?where? No mention of required disclosure of serving on board etc with those who have an interest before their agency, Independent Expenditure committees orgaanoxerd to support or oppose a candidate, short lifespan of many. Nonprofit review

Not sure I understand which fact patterns and what review you're commenting on; would like to better understand this question to provide a useful response.

The ETHICS AT work creates a conflict with ethics staff providing advice and direction to filers and then setting penalties for any violations''

I would respectfully disagree. Our office is charged with both education and enforcement duties, and creating a new outreach and training program to support employees' knowledge and compliance with the laws is squarely within that duty.

Form 700 filers by department not listed, requires too many steps to obtain listing.No mention of updating form 700 disclosures as things change for the filer. Basically a game of "Go Fish."

This feedback is helpful as we continue to work toward E-filing for all with a January 1 launch date and toward upgrading the content of the web as part of that effort.

No mention of new laws local and state or creation of new departments that require more from Ethics

We can evaluate how this might be captured in an ongoing way during the year and reflected in greater detail in future annual reports if the Commission would find that detail useful.

Did the chat on public financing include IE committees in private financing?

I would like to better understand this question to provide a useful response.

Whistleblower ordinance does not include penalty for failing to take training.

That is correct; the ordinance does not currently contain language imposing liability for failure to

take the training, although a department likely could impose discipline for failure to follow requirements that apply to supervisory roles.