

**Performance Audit of the
Ethics Commission**

Prepared for the

**Board of Supervisors
of the City and County of San Francisco**

by the

San Francisco Budget and Legislative Analyst

August 10, 2020

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

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August 10, 2020

President Norman Yee and Members of the San Francisco Board of Supervisors
Room 244, City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Dear President Yee and Members of the Board of Supervisors:

The Budget and Legislative Analyst is pleased to submit this *Performance Audit of the Ethics Commission*. In response to a motion adopted by the Board of Supervisors in January 2020 (Motion 20-005), the Budget and Legislative Analyst conducted this performance audit, pursuant to the Board of Supervisors powers of inquiry as defined in Charter Section 16.114 and in accordance with U.S. Government Accountability Office (GAO) standards, as detailed in the Introduction to the report.

The performance audit contains five findings and 16 recommendations, of which 15 are directed to the Ethics Commission Executive Director. The Executive Summary, which follows this transmittal letter, summarizes the Budget and Legislative Analyst's findings and recommendations. Our recommendations intend to improve the effectiveness of the Ethics Commission's performance.

The Ethics Commission Executive Director has provided a written response to our performance audit, attached to this report on page 64, and a summary of the Commission's accomplishments, beginning on page 65.

We would like to thank the Ethics Commission staff and representatives for the assistance they provided during the audit.

Respectfully submitted,



Severin Campbell
Principal

cc: Supervisor Fewer
Supervisor Haney
Supervisor Mandelman
Supervisor Mar
Supervisor Peskin
Supervisor Preston
Supervisor Ronen
Supervisor Safai
Supervisor Stefani
Supervisor Walton

Mayor Breed
Ethics Commission Executive Director
Clerk of the Board
City Attorney's Office
Mayor's Budget Director
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Executive Summary

The Board of Supervisors directed the Budget and Legislative Analyst’s Office to conduct a performance audit of the Ethics Commission through a motion (M20-005) passed on January 28, 2020. This performance audit contains five findings and 16 recommendations primarily directed to the Executive Director of the Ethics Commission.

Overview of the Ethics Commission

The City’s Charter states that “Public office is a public trust and all officers and employees of the City and County shall exercise their duties in a manner consistent with this trust”. The Charter provides for the City to adopt governmental ethics and conflict of interest laws governing the conduct of all City employees and elected officials. The Ethics Commission was created by San Francisco voters in 1993 to: administer the City’s campaign contribution, conflict of interest, lobbying, and whistleblower laws; investigate violations of these laws and assess penalties; and submit directly to the voters ordinances relating to governmental ethics.

The Ethics Commission is a five-member commission, each serving six-year terms. The Mayor, Board of Supervisors, City Attorney, District Attorney, and Assessor each appoint one member to the Commission. The Commission is responsible for adopting rules and regulations related to campaign finances, conflicts of interest, lobbying, campaign consultants, and governmental ethics.

Summary of Audit Findings and Recommendations

This audit report focuses on how the City can improve existing ethics programs including campaign finance, lobbying, governmental ethics, and other programs. This section details each of the five findings and 16 resulting recommendations.

Assessing Effectiveness and Risk of Ethics Programs

Department planning tools communicate goals but do not demonstrate effectiveness of core ethics functions

The Department has not standardized tools to regularly report on progress toward identified organizational objectives that allow staff and members of the public to consistently assess effectiveness of core functions. While the Department has created tools in recent years to determine high level priorities for the Department, the Department does not produce an annual report and has not implemented

consistent methods for performance reporting. Inadequate performance measurement and reporting can impair an organization's effectiveness and result in inefficient resource allocation.

Proactive compliance efforts enhance impact of ethics laws

Some City employees and officials may be at higher risk for violating ethics laws based on their job functions and ethics obligations. However, the Department does not assess training needs of City employees and officials based on risk and develop targeted trainings to address areas of risk. Providing proactive outreach on the City's ethics laws promotes voluntary compliance with these laws, reducing the need for enforcement efforts against those who want to comply with ethics laws. We recommend that the Department formalize and document its approach to providing training to City employees and officials.

Staff Resources and Hiring Timelines

Hiring resources are not sufficient to address persistent vacancies in the department

The Ethics Commission has a high vacancy rate, which in a department with only 24 budgeted positions as of FY 2019-20, significantly impacts the Department's work. The average vacancy rate between FY 2016-17 and FY 2019-20 was 19 percent, and salary savings were more than 18 percent of the total salary budget in FY 2019-20. Persistent vacancies have impacted all Department functions and contributed to slow processes in the Enforcement and Audit Divisions, as well as delays in implementing new programs, such as the Anti-Corruption and Accountability Ordinance.

The high vacancy rate is generally due to slow hiring, which averages 160 days for the Ethics Commission compared to a citywide average of 118 days. The Department's work order with the Department of Human Resources does not provide enough hours to fill all vacancies. Timely hiring and filling of vacant positions would allow the Ethics Commission to better fill its mandates to enforce ethics laws.

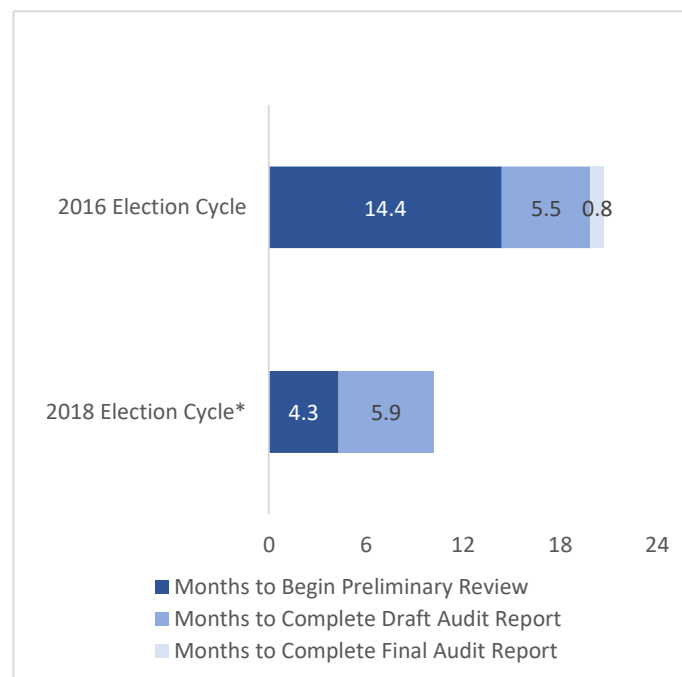
Audits of Election Campaign Committees

Campaign audits are not completed timely but the Audit Division has significantly reduced audit timelines

The Department’s procedure to conduct audits of election campaign committees is its main enforcement tool to detect violations of campaign finance laws, but long review timelines for discretionary audits compromise the effectiveness of this tool. This does not include public financing audits, which are conducted by a private accounting firm on behalf of the Ethics Commission.

- In the 2016 election cycle, the average total audit length for discretionary audits was approximately 21 months, and the last audit report was not issued until December 2019.
- Only one audit had been completed from the 2018 election cycle as of June 2020, but the Department was on track to complete these audits in a shorter timeframe compared to the 2016 election cycle.

Average Months to Complete Audit



* Not all 2018 election cycle audits had been completed at the time of the audit.

A lengthy audit process reduces the relevancy of potential findings for the public, as audits are completed long after the election occurred and also hinders the Department’s ability to take enforcement action within the statute of limitations. In addition, the Audit Division has not conducted a required lobbyist audit although they have taken steps in recent years to establish a lobbyist audit program. This reduces accountability for lobbyists and could result in underreporting of lobbyist activity. We recommend that the Department establish a lobbyist audit program and complete a lobbyist audit by the end of FY 2020-21.

Investigations of Alleged Violations of Ethics Laws

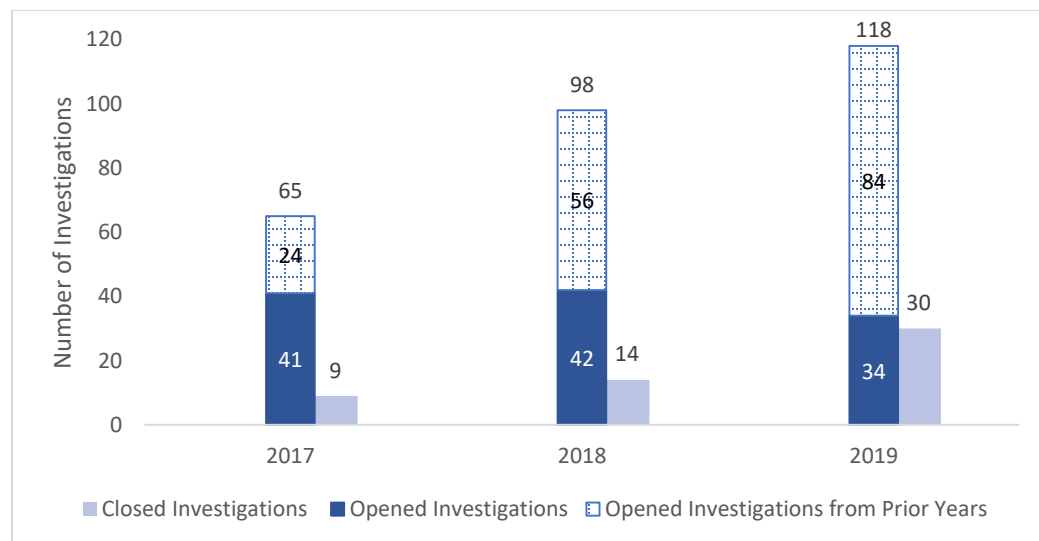
Investigations take more than two years on average to resolve

The Enforcement & Legal Affairs Division takes more than two years on average to conduct a preliminary review and complete investigations of alleged violations of ethics laws, campaign finance laws, and other relevant laws under its purview. Our review focused on complaints for which investigators determined there was sufficient evidence to open an investigation and excludes complaints that were dismissed during preliminary review. The length of time to close investigations combined with other factors, such as Division vacancies, has prevented the Enforcement Division from resolving as many investigations as it opens in a given year, with some investigations taking several years to resolve.

Between 2017 and 2019, the Division opened more than twice as many investigations as it closed

In 2018, the Division opened 42 investigations and only closed 14, resulting in an increase in the number of prior-year cases carried forward into subsequent years. The number of prior-year cases carried into 2020 was nearly three times the number of cases closed in 2019.

Number of Investigations Opened, Closed, and Carried Forward



Timely resolution of ethics investigations is important for promoting public confidence in government and realizing the deterrence effect of enforcement. We recommend a number of changes to improve the efficiency of the Enforcement & Legal Affairs Division, such as expansion of the number of violations that undergo

a streamlined enforcement process and fixed penalty, and enhanced training for investigators.

Whistleblower Protection from Retaliation

Ensuring City officials, employees, and contractors are protected from retaliation is critical to the effectiveness of the City's whistleblower program. The City's Whistleblower Protection Ordinance prohibits a City officer or employee from terminating, demoting, suspending, or taking other similar adverse employment action against an individual because that person has filed a report alleging improper governmental activity (such as misuse of City funds or violations of conflicts of interest laws) of a city officer or employee. The Ethics Commission's Enforcement Division is responsible for investigating complaints that an individual faced retaliation due to whistleblower actions.

Investigation of whistleblower retaliation complaints relies on witness testimony and other evidence to determine that a protected activity occurred, the complainant suffered an adverse employment action, and the adverse employment action was caused by the protected activity. However, because whistleblower retaliation investigations closed since 2017 took more than 2.7 years to resolve on average, witness testimony may not be accurate due to the length of time since the original incident, making it difficult to establish the validity of the retaliation complaint. In addition, Enforcement Division investigators receive less training in investigating whistleblower retaliation which pertains mostly to employment law rather than ethics law, than investigators in the Equal Employment Opportunity division of the City's Department of Human Resources. Increased investigator training could improve the timeliness and effectiveness of whistleblower retaliation investigations.

Introduction

The Board of Supervisors directed the Budget and Legislative Analyst's Office to conduct a performance audit of the Ethics Commission through a motion (M20-005) passed on January 28, 2020.

Scope

The scope of this performance audit includes all Ethics Commission functions, including efforts to promote voluntary compliance with ethics laws, enforcement efforts to identify and investigate allegations of violations of ethics laws, and administrative and policy functions. Broadly, we looked for opportunities to improve the effectiveness and efficiency of Department operations.

Methodology

We conducted this performance audit in accordance with Generally Accepted Government Auditing Standards (GAGAS), 2018 Revision, issued by the Comptroller General of the United States, U.S. Government Accountability Office. In accordance with these requirements and standard performance audit practices, we performed the following performance audit procedures:

- Conducted interviews with management and other staff at the Ethics Commission (Department).
- Reviewed prior reports issued by the San Francisco Civil Grand Jury related to the City's ethics programs and whistleblower protection.
- Reviewed the Department's policies and procedures; training materials and records; audit and enforcement records; and Ethics Commission meeting agendas, minutes, and staff reports.
- Analyzed staffing and budget data provided by the Department.
- Analyzed investigations data and conducted case studies of selected investigations.
- Conducted an extensive literature review to identify best practices related to ethics programs.
- Submitted a draft report, with findings and recommendations, to the Ethics Commission on July 6, 2020; and conducted an exit conference with the Department on July 20, 2020.
- Submitted the final draft report, incorporating comments and information provided in the exit conference, to the Ethics Commission on July 27, 2020

We would like to thank the Ethics Commission, the City Attorney's Office, and the Department of Human Resources for their assistance during this audit process.

We would also like to thank the California Fair Political Practices Commission, the San Diego Ethics Commission, the Oakland Public Ethics Commission, and the Los Angeles City Ethics Commission who spoke with us or provided information on their practices.

Overview of the Ethics Commission

The City's Charter states that "Public office is a public trust and all officers and employees of the City and County shall exercise their duties in a manner consistent with this trust". The Charter provides for the City to adopt governmental ethics and conflict of interest laws governing the conduct of all City employees and elected officials.

The Ethics Commission was created by San Francisco voters in 1993 to:

- Administer the City's campaign contribution, conflict of interest, lobbying, and whistleblower laws;
- Investigate violations of these laws and assess penalties; and
- Submit directly to the voters ordinances relating to governmental ethics.

In November 2001, San Francisco voters approved a Charter amendment that further defined Ethics Commission requirements, including:

- Authorizing the Commission to investigate ethics complaints independent of referrals by the City Attorney or District Attorney;
- Adding new conflict of interest rules for Commission members and staff; and
- Prohibiting Commission members and management staff from engaging in political activity for one year after leaving the Commission.

The Ethics Commission is a five-member commission, each serving six-year terms. The Mayor, Board of Supervisors, City Attorney, District Attorney, and Assessor each appoint one member to the Commission. The Commission is responsible for adopting rules and regulations related to campaign finances, conflicts of interest, lobbying, campaign consultants, and governmental ethics. The City Attorney is the legal advisor to the Commission.

Commission Mission

According to the Commission's by-laws, the mission of the Ethics Commission is to practice and promote the highest standards of ethical behavior in government, and to promote a work environment that values health, wellness, and diversity. In order to fulfill this mission, the Commission defines their responsibilities as:

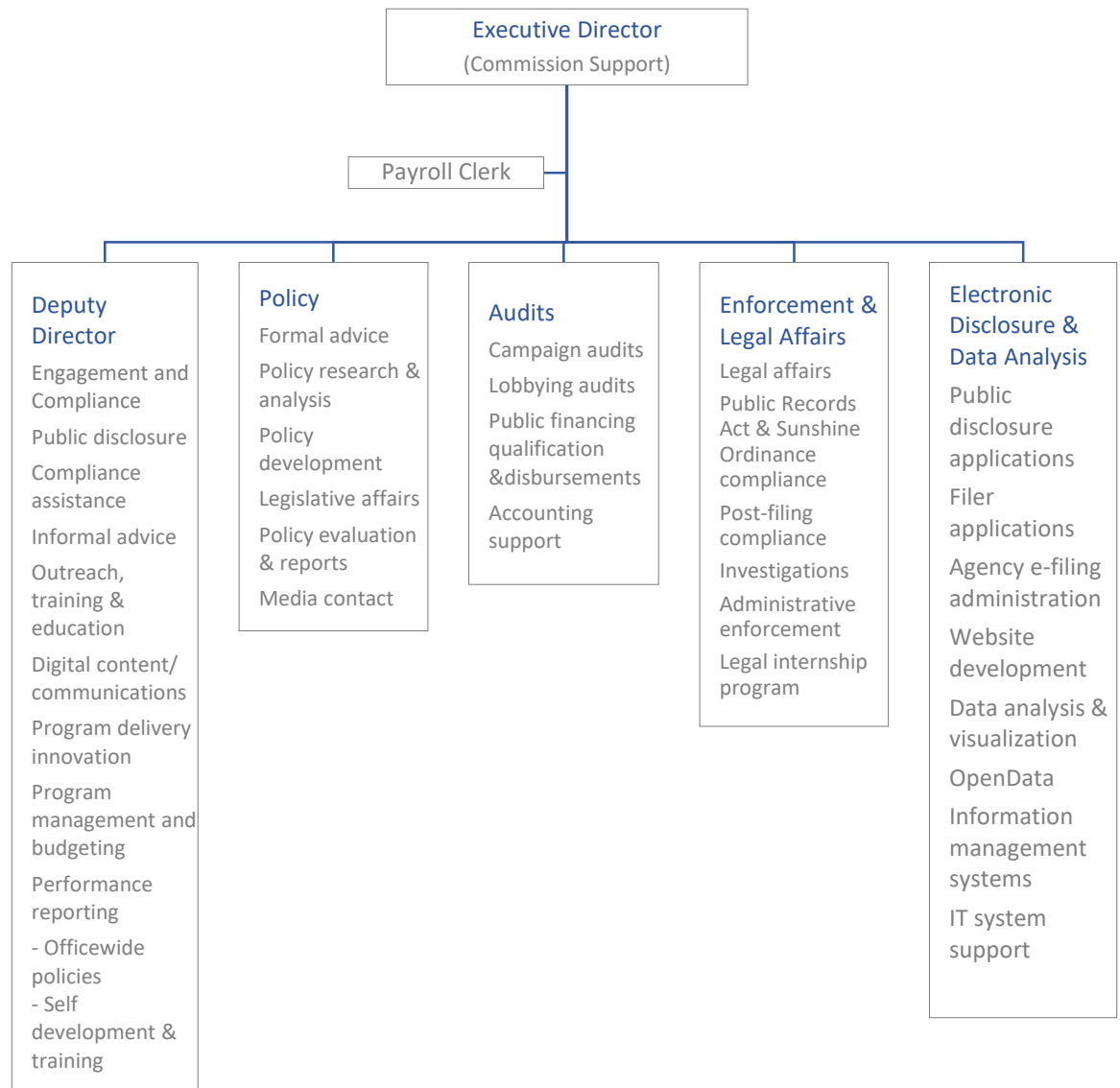
- Clearly informing candidates for public office, public employees, and other officials and members of the public of existing ethics laws and rules;
- Actively enforcing all ethics laws and rules, including campaign finance and open government laws;
- Recommending new laws, rules, and programs that will lead to ethics compliance;
- Serving as a model for other elected and appointed officials and government employees; and
- Faithfully adhering to its own Code of Ethics.

The Commission's Code of Ethics are defined in Article XI of the Commission's By-Laws, which states that the Commission commits itself to setting the highest standards of conduct, including the appearance of propriety in the operation of government, and to assure public confidence in governing institutions.

Commission Staff and Functions

The Ethics Commission appoints the executive director of the department supporting the Commission, who is then authorized to appoint department staff. The Department has 23 budgeted positions and five program areas, shown in Exhibit 1 below.

Exhibit 1: Ethics Commission Programs and Organization



The City’s Campaign and Governmental Conduct Code defines the City’s ethics laws and responsibilities of the Ethics Commission. The Commission’s primary responsibilities as defined in the Code are oversight and administrative enforcement of laws governing election campaigns, lobbying, conduct of City officials and employees, and protection of whistleblowers.

Public Disclosure and Compliance Guidance

State and local laws require candidate and initiative campaigns to file financial disclosure statements. These statements must be filed electronically unless

campaign spending falls below a specified threshold. Campaigns must also disclose contributions by individuals, businesses, City contractors, and property owners with pending land use matters that exceed a specified amount. Statements disclosing contributions to pay for advertising or other media and communications to support a candidate or initiative must also be filed with the Ethics Commission.

The Ethics Commission is responsible to provide training to candidates and campaign staff on disclosure requirements, and to lobbyists on rules and regulations. Disclosed financial information must be made available to the public.

Annual Statement of Economic Interest

State law requires elected and other officials to disclose financial interests, including gifts, by filing Statements of Economic Interest (Form 700) annually. Elected officials, department heads, and board and commission members file their statements with the Ethics Commission electronically. City departments designate other staff, such as financial and contract staff, who must file Annual Statements of Economic Interest, but these statements are filed in hard copy with the respective departments. Annual Statements of Economic Interest filed with the Ethics Commission are available in a searchable database on the Commission's website.

As part of its Public Integrity Review, the Controller's Office identified gaps in gift restrictions to City officials and employees in State and local laws in a preliminary assessment released in June 2020. Specifically, local laws may not restrict gifts when the gift giver owns (or is employed by) a company that could do business with their department, and State law does not restrict some gifts when the gift giver has a long-term close personal friendship with the City employee or official. The report recommended that the Ethics Commission: (a) examine and close loopholes related to acceptance of gifts in the City's Campaign and Governmental Conduct Code; and (b) require electronic filing of Statements of Economic Interest by all filers (including City department designees) and conduct annual compliance reviews of these filings.

Policy and Advice

The Department provides both formal and informal advice on the City's ethics laws and regulations, including public financing of campaigns and other campaign financing requirements, lobbyist laws, campaign and permit consultant

regulations, and major developer regulations. The Department also conducts policy analysis and legislative review, and consistent with Charter, may recommend ordinances covering campaign financing, lobbying, and governmental ethics.

Election Campaigns and Contributions

The Ethics Commission is responsible for administrative enforcement of state, and local campaign finance laws. Campaign finance responsibilities include providing training to candidates and campaign committees on campaign finance regulations; defining recording keeping, reporting and record retention responsibilities of campaigns; maintaining public access to campaign financial statements; and certifying candidate eligibility for public financing.

Audits, Investigations, and Enforcement

The Ethics Commission is responsible under the Campaign and Governmental Conduct Code for auditing all mayoral and board of supervisors candidates receiving public financing for their campaigns. Ethics Commission staff also audit other campaigns selected randomly or based on objective criteria at the discretion of the Executive Director. Campaign financing violations, whether initiated by audit staff or filed as a complaint by others, are investigated by the Department's Enforcement and Legal Affairs Division. The Enforcement and Legal Affairs Division investigates complaints alleging violations of laws under the Commission's jurisdiction, including subpoenas issued by the Executive Director if necessary, and may pursue administrative enforcement, including penalties, when warranted.

Campaign Consultant and Lobbyist Registration

The Ethics Commission is responsible under the Campaign and Governmental Conduct Code to register campaign consultants and lobbyists, including adopting rules and regulations, and for enforcement of campaign consultants' and lobbyists' compliance with Code provisions. The Commission may assess fines and other monetary penalties for campaign consultant violations, as defined in the Code. The Code provides for the Executive Director to conduct at least one random audit of lobbyists each year, but as discussed in Section 3 of this report, the Department has not yet begun audits of lobbyists.

Whistleblower Protections

The Campaign and Governmental Code defines the Ethics Commission's responsibilities in protecting whistleblowers from retaliation. Anyone may file a complaint of improper or illegal governmental activity with the City Attorney, District Attorney, Controller, or Ethics Commission. The Ethics Commission is specifically responsible to investigate whistleblower complaints pertaining to campaign finance, lobbying activities, conflicts of interest, and governmental ethics. City employees and employees of City contractors are afforded protections under the Code.

Ethics Commission Budget

The Ethics Commission's annual budget is made up of staff and operating costs, including ongoing projects for lobbyist registration and implementation of the e-filing system, and the Election Campaign Fund setting aside funds for public financing of campaigns.

Exhibit 2: FY 2017-18 through FY 2019-20 budget

	FY 2017-18	FY 2018-19	FY 2019-20
Sources			
Registration Fees	\$115,000	\$142,000	\$142,000
Fines	10,250	12,750	12,750
Other Government Charges	2,450	2,450	2,450
General Fund	4,659,808	6,300,845	11,449,218
Total Sources	\$4,787,508	\$6,458,045	\$11,606,418
Uses			
Staff Costs	\$3,285,036	\$3,671,235	\$3,952,144
Other Operating Costs	646,531	497,987	617,722
Subtotal Operating	3,931,567	4,169,222	4,569,866
E-Filing System	299,179	153,569	151,136
Public Campaign Financing	475,050	2,053,542	6,803,704
Expenditures Lobbyist Registration	81,712	81,712	81,712
Total	\$4,787,508	\$6,458,045	\$11,606,418

Source: Annual Appropriation Ordinance

Election Campaign Fund

The City's Campaign and Governmental Conduct Code provides public financing to candidates for Mayor or Board of Supervisors who have met the requirements for campaign fundraising. The Board of Supervisors amended the Campaign and

Governmental Conduct Code in September 2019 to increase the amount of public financing available to eligible campaigns. General Fund monies are appropriated to the Election Campaign Fund, which is capped at \$7.0 million by the Code.

The City's Ethics Laws

Major Developers and Permit Consultants

In 2014, the Board of Supervisors amended the Campaign and Governmental Conduct Code to include major developers. The Code amendment also required permit consultants to register with the Ethics Commission and disclose contacts with permitting agencies, such as the Departments of Planning or Building Inspection, and contributions to political campaigns. Developers of major projects are now required to disclose contributions to nonprofit organizations, contacts with City officials, and public comments in a board or commission hearing. Major developer and permit consultant disclosures are posted on the Ethics Commission website.

Conflicts of Interest

In 2018, the Campaign and Governmental Conduct Code was amended to further define campaign finance and conflict of interest provisions. Among other provisions, the Code amendment:

- Clarified that campaign contributions could not be made with the intent of forwarding the contribution to another campaign in order to circumvent campaign contribution limits;
- Increased certain campaign disclosure and reporting requirements;
- Prohibited developers seeking development approval from making campaign contributions;
- Established new conflict of interest requirements for elected officials; and
- Established new reporting requirements for City elected officials and members of City boards and commission for soliciting contributions from a single source for legislative, governmental, or charitable purposes.

1. Assessing Effectiveness and Risk of Ethics Programs

The Department has not standardized tools to regularly report on progress toward identified organizational objectives that allow staff and members of the public to consistently assess effectiveness of core functions. While the Department has created tools in recent years to determine high level priorities for the Department, the Department does not produce an annual report and has not implemented consistent methods for performance reporting. Inadequate performance measurement and reporting can impair an organization's effectiveness and result in inefficient resource allocation. We recommend improvements to performance monitoring and reporting to demonstrate effectiveness of ethics programs and progress towards Department priorities.

Some City employees and officials may be at higher risk for violating ethics laws based on their job functions and ethics obligations. However, the Department does not assess training needs of City employees and officials based on risk and develop targeted trainings to address areas of risk. Providing proactive outreach on the City's ethics laws promotes voluntary compliance with these laws, reducing the need for enforcement efforts against those who want to comply with ethics laws. We recommend that the Department formalize and document its approach to providing training to City employees and officials.

Department Planning Tools Communicate Goals but Do Not Demonstrate Effectiveness of Core Ethics Functions

The Department has not standardized tools to regularly report on progress toward identified organizational objectives that allow staff and members of the public to consistently assess effectiveness of core functions. While the Department has created tools in recent years to determine high level priorities for the Department, the Department does not produce an annual report and has not implemented consistent methods for performance reporting. Inadequate performance measurement and reporting can impair an organization's effectiveness and result in inefficient resource allocation.

The Institute for Local Government recommends that compliance and ethics programs be monitored and periodically evaluated to assess effectiveness. Further, performance measurement is a best practice, and the City also recognizes the critical importance of tracking performance metrics, as indicated by the annual

reports on metrics provided through the Mayor's Proposed Budget Books and the ongoing work of the Performance Program in the Controller's Office.

Enhanced Planning Tools to Communicate Goals and Priorities

2016 Blueprint for Accountability

The Department's budget request for FY 2016-17 and FY 2017-18, identified four priorities for the Department, referred to as the "Blueprint for Accountability", including:

1. Effective Investigations and Enforcement;
2. Strengthened Policy Focus;
3. Proactive Compliance Outreach; and
4. E-Filing Conversion and Improved Service Delivery

While the Department has made progress on these four priorities, the Department has not implemented consistent methods to evaluate and demonstrate its progress, such as regular reporting that includes specific performance measures. The Department's budget request for FY 2018-19 and FY 2019-20 included a scorecard that described progress made on these four priorities. The scorecard gave each of the four priorities an overall score on progress but did not include specific measures related to these goals to demonstrate progress. In addition, reporting on progress has not been consistent. The Department's budget requests for the next two years did not include a similar scorecard, and the Department has not reported on progress made on the four priorities formally in other reports. The February 2018 scorecard is shown in Exhibit 3 below.

While high level measures for the broader priorities may be appropriate (e.g. a score of three out of four on overall progress), the specific outcomes identified (such as higher proportion of enforcement cases containing most serious violations or patterns of violations) call for specific performance measures to demonstrate the level of progress, which are not included.

Exhibit 3: Blueprint for Accountability Scorecard, February 2018



Source: Ethics Commission FY 2018-20 budget submission, February 2018

Policy Prioritization Plan

To support the Department’s goals to achieve a strengthened policy focus, the Department uses its Policy Prioritization Plan to prioritize and schedule policy projects, such as reviews of programs and regulations. The Department presents the Plan to the Ethics Commission on a quarterly basis and provides interim updates in the monthly staff policy reports. The Plan includes the status of ongoing policy projects (previously identified as priorities) and a list of other potential future projects with scores for their impact and urgency, as well as estimated timeframe, so that the Ethics Commission may prioritize these projects accordingly. Ongoing projects from the August 2019 plan included: (1) implementing electronic filing for all designated form 700 (Statement of Economic Interests) filers in the City; and (2) review of the Public Financing Program. The plan identified nine potential projects, including review of the campaign consultant program and review of lobbying codes and regulations. An excerpt from the August 2019 plan is shown below.

Exhibit 4: Excerpt from Policy Prioritization Plan, August 2019

Ongoing Policy Projects				
Priority	Project	Impact	Urgency/ Timeliness	Project Timeframe
1	<p>E-filing Form 700:</p> <p>The Commission has expressed its continuing support for disclosure forms submitted in an electronic format to increase accountability and transparency and ease filer compliance. This project will develop the systems and requirements for Statements of Economic Interests for all designated filers in the City to be filed electronically using the Commission's online filing system.</p>	7	7	18+ Months
2	<p>Public Financing Program Review:</p> <p>Continued legislative support for File 190660, approved by the Commission at the May 2019 meeting. Implementation support if approved by Board and Mayor.</p>	9	8	3-6 Months
Potential Policy Projects				
Priority	Project	Impact	Urgency/ Timeliness	Staff Commitment & Project Timeframe
	<p>Campaign Consultant Program Review (Art I, Ch V):</p> <p>The Campaign Consultant program was instituted by Ordinance No. 71-00. The program hasn't been significantly reviewed since 2014, with amendments being proposed, but not adopted, in 2010 and 2011.</p>	6	5	3-6 Months
	<p>Lobbying Code and Regulations Review (Art II, Ch I):</p> <p>The Commission has not embarked on a comprehensive review of the lobbying program. This project would entail a review of all relevant codes and regulations and identify potential changes to improve program outcomes.</p>	8	5	6-9 Months

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Source: Monthly Staff Policy Report to Ethics Commission, August 2019

No Comprehensive Annual Reporting

The Department has not published an annual report since FY 2014-15. Annual reports are useful documents for City employees and the public to learn about the work of their ethics commission and to obtain an overview of compliance and

enforcement outcomes. They can also serve as a tool for management to examine accountability, consistency, and effectiveness. Producing annual reports is also a common practice in other jurisdictions. The City of Oakland's Public Ethics Commission and the San Diego Ethics Commission produce annual reports.

The Department produces regular reports for the monthly Ethics Commission meetings on some department activities (as discussed below), and the Controller's annual Citywide performance report includes six performance measures for the Department. However, these reports do not cover all Department activities and are not sufficient to demonstrate effectiveness of programs or progress over time. We recommend that the Department produce an annual report that communicates its goals, activities, and outcomes to employees and members of the public. The annual report should include specific performance measures for each function and establish goals for those measures so that the Department may assess its performance against goals and track progress over time.

Monthly Reporting to Commission

As of February 2020, the Department prepared three regular reports for the monthly meeting of the Ethics Commission, including:

- The **Staff Policy Report** provides updates on projects that are part of the Policy Prioritization Plan.
- The **Staff Enforcement Report** provides statistics on matters in preliminary review and open investigations, including the age of these matters and tabulations by type (i.e. campaign, lobbying, etc.).
- The **Executive Director's Report** summarizes programmatic and operational highlights, including implementation of new programs, year to date revenue totals, and position vacancies and hiring status.

In addition to these reports, the Department prepares memos on various topics, such as proposed legislative or policy changes. These reports enhance transparency and oversight of Department activities, particularly its policy and enforcement work, but they are not sufficient tools to evaluate Department performance over time.

Ethics Performance Measures from Citywide Performance Reports

The Controller's Citywide performance report includes six measures for the Department, including three measures related to compliance and three measures related to accountability in government. The six measures included in the

Controller's Citywide performance report for the Ethics Commission are shown below in Exhibit 5.

Exhibit 5: Ethics Performance Measures in Citywide Scorecard, FY 2016-17 – FY 2018-19

Measure	2016-17		2017-18		2018-19	
	Target	Actual	Target	Actual	Target	Actual
Goal: Enhance Transparency through Public Disclosure						
Percentage of annual Statements of Economic Interests e-filed on time	95.0%	99.0%	90.0%	91.0%	90.0%	97.3%
Percentage of expected campaign finance statements (form 460) filed on time	86.0%	89.0%	88.0%	76.0%	70.0%	84.6%
Percentage of identified lobbyists filing reports on a timely basis	92.0%	93.7%	96.0%	88.6%	90.0%	93.1%
Goal: Increase Accountability in Government						
Average age (in months) of open matters in preliminary review	*	*	3	2.2	5	8.9
Number of campaign committees and publicly financed candidate committees audited	25	19	19	18	16	10
Number of investigations opened	*	*	60	62	60	34

Source: Office of the Controller Performance Scorecards

*Scorecard began tracking measure in FY 2017-18

While the Citywide Performance report provides high-level measures for all departments, the report is not intended to provide detailed measures for all department activities. The three compliance measures show the timeliness of disclosure filings for three of the Department's compliance programs (the statement of economic interest, campaign finance, and lobbyist programs). However, this reflects just a small share of the Department's many filings and compliance programs. Two of the three accountability measures capture outputs (the number of investigations opened and the number of campaign audits conducted) and the third captures efficiency of preliminary review, the first stage of the investigations process, (average age of open matters in preliminary review). However, none of the enforcement measures capture outcomes, which are emphasized in performance measurement best practices. Outcomes (such as the percent of audits that yield material findings) show the impact of service outputs

(such as the number of campaign audits and number of compliance contacts with campaign committees) and help internal and external stakeholders determine if the services provided are meeting the ultimate goals of the program. If services are unaligned with program goals, increasing outputs may not meaningfully improve desired outcomes. An annual report produced by the Department could provide more detail on compliance and enforcement activities and the outcomes of those activities.

Proactive Compliance Efforts Enhance Impact of Ethics Laws

Providing training and outreach on the City's ethics laws promotes voluntary compliance with these laws, reducing the need for enforcement efforts against those who want to comply with ethics laws. The Engagement and Compliance Division provides guidance, training, and public disclosure filing assistance for the City's ethics programs, including campaign finance, lobbying, governmental ethics, and other programs. While some individuals or city departments seek out compliance assistance directly, others may not contact the Department for assistance. Providing proactive compliance outreach to individuals that may not contact the Department directly expands the reach of compliance efforts and also maximizes use of Department resources, as insufficient proactive outreach can result in more requests for one-on-one assistance.

The 2016 Blueprint for Accountability identified the need for proactive compliance outreach to enhance the impact of ethics laws. Specific goals under this priority included: (a) broadened outreach to enhance consistency across program areas; (b) regular evaluation of existing program administration practices for continuous improvement; and (c) increased number, frequency, and timeliness of compliance guidance contacts. In addition, the Institute for Local Government recommends that agencies prioritize proactive compliance efforts based on an assessment of the risk of unlawful conduct for each program area.

We recommend that the Department establish specific performance measures for the compliance goals identified in the Blueprint for Accountability, formalize and document its approach to providing training to City employees and officials, and use audit findings to inform campaign finance outreach. We also recommend that the Department report on compliance activities, goals, and performance in our recommended annual report.

Ethics Training for City Employees and Officials

Some City employees and officials may be at higher risk for violating ethics laws based on their job functions and ethics obligations. However, the Department does not assess training needs of City employees and officials based on risk and develop targeted trainings to address areas of risk. Compliance staff provide guidance to individuals at their request. In addition, the Department and the City Attorney's Office provide trainings on ethics topics to City departments at their request or as required by provisions of one employee bargaining agreement, but City employees working in departments that do not reach out to the Ethics Commission may not receive targeted trainings.

Elected officials, commissioners, board members, and department heads are required to complete an online ethics training (required under State law) and an online Sunshine Ordinance training (required by the Administrative Code) annually and file a declaration form that they completed these trainings with the Ethics Commission. In addition, department deputy directors and departmental staff who have contracting or purchasing responsibilities are required to complete the online ethics training every two years, but they do not have to file a declaration form with the Ethics Commission. City employees who do not have contracting or purchasing responsibilities and are not deputy directors or department heads are not required to complete ethics training by State or local laws.

In addition to online training requirements for certain City officials and employees, some employees must receive annual instructor-led training. A new provision of the memorandum of understanding with the Municipal Executives' Association (MEA) effective July 2019 requires that the City provide covered employees (i.e. managers) ethics training during work time, including an instructor-led training at least annually. The Department provided this training in 2019 and 2020.

We recommend that the Department formalize and document its approach to providing training on ethics laws to City employees and officials to ensure city employees receive targeted training and Department outreach resources are maximized based on perceived risk of non-compliance.

Audit Findings Could Inform Compliance Strategies for Campaign Finance

Findings from audits of election campaign committees could inform compliance strategies for the Department's campaign finance program. In particular, the high

rate of errors among committees audited in the 2016 election cycle indicates that compliance could be improved.

Audits identified errors or violations in all of the publicly financed committees audited (12 out of 12) in the 2016 election cycle and in more than 50 percent of committees selected for discretionary audits (8 out of 15). A total of 49 errors or violations were found across the 27 committees that were audited in the 2016 election cycle. Ten of these committees, or 37 percent of the total that were audited, could not provide support for some campaign expenditures, such as invoices, contracts, and payment records. This was the most common finding in the 2016 election cycle and was found in nine out of 12 committees that received public financing. Smaller campaigns that do not use professional treasurers are more likely to keep less detailed records compared to larger campaigns that use professional treasurers. An overview of errors and violations from the 2016 election cycle audits is shown in Exhibit 6 below.

Exhibit 6: 2016 Election Cycle Audits Errors and Violations

Audit Type	Audits Completed	Committees with Errors or Violations	Committees that Could Not Provide Support for Some Expenditures
Publicly Financed Committees	12	12	9
Discretionary	15	8	1
Total	27	20	10

Source: San Francisco Ethics Commission

While the audit program is intended to promote compliance through increased accountability, the Department is also responsible for informing candidates for public office of existing ethics laws and rules. We recommend that the Audit Division produce a summary of findings and submits it to the Director of the Engagement and Compliance Division to inform future training and outreach materials.

Conclusion

While the Department has created tools in recent years to determine and communicate high level priorities for the Department for Commission oversight and budgetary purposes, regular reporting on progress towards these goals has not been consistent. In addition, the Department does not produce an annual

report and has not implemented consistent methods for performance reporting. The Department's proactive compliance efforts improve the impact of ethics laws and programs, but these efforts could be enhanced by using a risk-based approach to inform training offerings and continuing to evaluate program administration.

Recommendations

The Executive Director should:

Recommendation 1: Produce an annual report that communicates the Department's goals, activities, and outcomes to employees and members of the public. The annual report should include specific performance measures for each function, with a focus on measures that capture outcomes, and establish goals for those measures.

Recommendation 2: Formalize and document procedures to provide training on ethics laws to City employees and officials. The procedures should specify: (a) how training needs will be assessed; (b) training goals; (c) a process for tracking progress towards achieving training goals; and, (d) a process for routinely evaluating, updating, and revising training procedures.

Recommendation 3: Direct the Audit Division to produce a summary of audit findings after each audit cycle and submit to the Director of the Engagement and Compliance Division to inform compliance efforts.

2. Staffing

The Ethics Commission has a high vacancy rate, which in a department with only 24 budgeted positions as of FY 2019-20, significantly impacts the Department's work. The average vacancy rate between FY 2016-17 and FY 2019-20 was 19 percent, and salary savings are projected to be more than 18 percent of the total salary budget in FY 2019-20. Persistent vacancies have impacted all Department functions and contributed to slow processes in the Enforcement and Audit Divisions, as well as delays in implementing new programs, such as the Anti-Corruption and Accountability Ordinance.

The high vacancy rate is generally due to slow hiring, which averages 160 days for the Ethics Commission compared to a citywide average of 118 days. The Department's work order with the Department of Human Resources does not provide enough hours to fill all vacancies. The Board of Supervisors should ensure that sufficient funds are available in the Department's budget to allow the Department of Human Resources to recruit and hire for vacant positions on behalf of the Ethics Commission. Timely hiring and filling of vacant positions would allow the Ethics Commission to better fill its mandates to enforce ethics laws.

Hiring Resources are not Sufficient to Address Persistent Vacancies in the Department

Despite annual hiring efforts, the Ethics Commission has been unable to reach full staffing levels. The Department typically underspends its annual budget for salaries and benefits by nearly one-quarter and has had an average quarterly vacancy rate of approximately 19 percent since October 2015. Staffing shortages have contributed to slow processes in the Enforcement and Audit Divisions, as well as delays in implementing new programs, such as the Anti-Corruption and Accountability Ordinance.

The Department of Human Resources (DHR) provides a full scope of non-payroll related human resources services, including recruitments and hiring, to the Ethics Commission through a work order. This is typical of other smaller City departments, while larger departments typically conduct their own recruitments. The DHR work order hours are also used for other services besides recruitment, including addressing performance and disciplinary issues. Due to DHR's other functions, the work order typically only allows for one recruitment at a time

according to interviews with DHR staff. As shown below, the Department has started each of the last four fiscal years with no fewer than five vacancies despite positions hired during the year, some of which were internal hires. When an internal employee is promoted, the employee vacates one position to fill another, with no change to the Department's number of vacancies.

Exhibit 7: Ethics Commission's DHR Work Orders

Fiscal Year	Work Order Amount	Approximate Work Order Hours	Number of Positions Hired*	Vacancies at Beginning of Fiscal Year (As of July 1)
FY 2016-17	\$176,000	1,956**	9	6
FY 2017-18	22,504	250	7	6
FY 2018-19	27,000	300	9	7
FY 2019-20	62,000	668	3	5

Source: San Francisco Ethics Commission

* Number of positions hired includes internal promotions, which do not reduce the Department's number of vacancies.

** Hours for FY 2016-17 are estimated based on the total work order amount and an estimated billing rate of \$90 per hour (the average rate in FY 2017-18 and FY 2018-19).

According to Ethics Commission staff, the DHR work order amount increased to \$62,000 in FY 2019-20 because the prior year budgeted work order amount (\$27,000) was not sufficient to address the Department's human resources needs. In FY 2018-19, actual services provided by DHR totaled \$113,889, which far exceeded the \$27,000 work order amount, due to greater than anticipated hiring and separation related needs.¹ Despite additional services provided in FY 2018-19, the Department had five vacancies at the end of the fiscal year.

Due to persistent vacancies, the Ethics Commission typically underspends its annual budget for salaries and benefits by nearly one-quarter. Over this four-year period, total operating budget salary savings were approximately \$3.1 million, or approximately 23 percent of the department's total salaries and benefits budget of approximately \$13.6 million, although salary savings decreased from 29.5 percent in FY 2016-17 to 18.3 percent in FY 2019-20. While the Department expects some savings in the year due to normal turnover (i.e. retirements and other staff separations) and budgets approximately \$200,000 per year for

¹ In FY 2018-19, DHR billed the Department \$50,000 for these services and absorbed the remaining \$63,889 within its own budget.

expected salary and benefits savings, these savings are in excess of what is already budgeted. Annual salary and benefits savings are shown in Exhibit 8 below.

Exhibit 8: Ethics Commission Salary and Benefits Savings, FY 2016-17 – FY 2019-20

Fiscal Year	Salaries and Benefits Budget	Salaries and Benefits Actual Expenditures	Surplus	Surplus Percentage
FY 2016-17	\$2,712,001	\$1,912,265	\$799,736	29.5%
FY 2017-18	3,264,429	2,499,593	764,836	23.4%
FY 2018-19	3,648,235	2,869,322	778,913	21.4%
FY 2019-20	3,952,144	3,228,999	723,145	18.3%
Total	\$13,576,809	\$10,510,179	\$3,066,630	22.6%

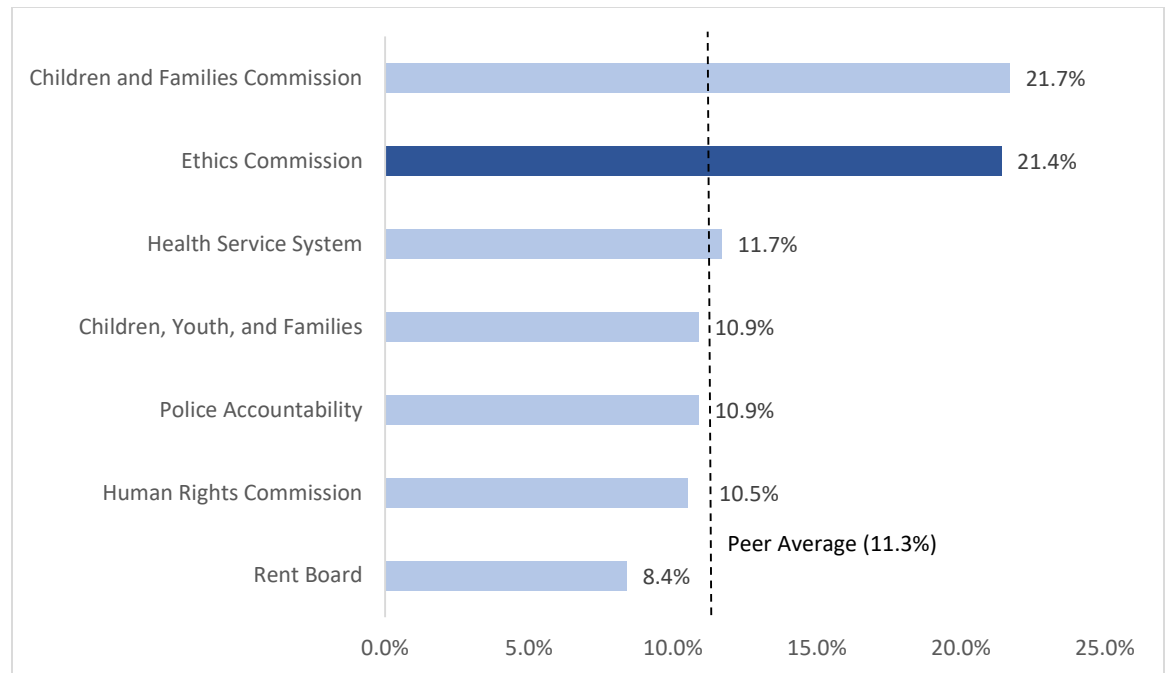
Source: San Francisco Ethics Commission

The Department has requested additional funding to augment the DHR work order during the annual budget process and has also requested using salary savings to fund additional DHR work order hours, but these requests have not been approved.

A review of similarly sized City departments with predominantly administrative functions shows that the Ethics Commission has a relatively high level of salary savings.² In FY 2018-19, the peer departments had an overall surplus of approximately 11 percent of budgeted salaries and benefits, which is significantly lower than the Ethics Commission's surplus of approximately 21 percent that year. Salary savings of other City departments as a percentage of their salaries and benefits budgets are shown in Exhibit 9 below.

² The other departments reviewed in this analysis are the Children and Families Commission, Department of Children, Youth, and Families, Department of Police Accountability, Human Rights Commission, Health Service System, and Rent Board. We excluded the Arts Commission due to the Department's use of off-budget staff for certain programs. We also excluded the Department of Elections due to the Department's use of temporary salaries to support elections.

Exhibit 9: Average Salary Savings of Comparison City Departments, FY 2018-19



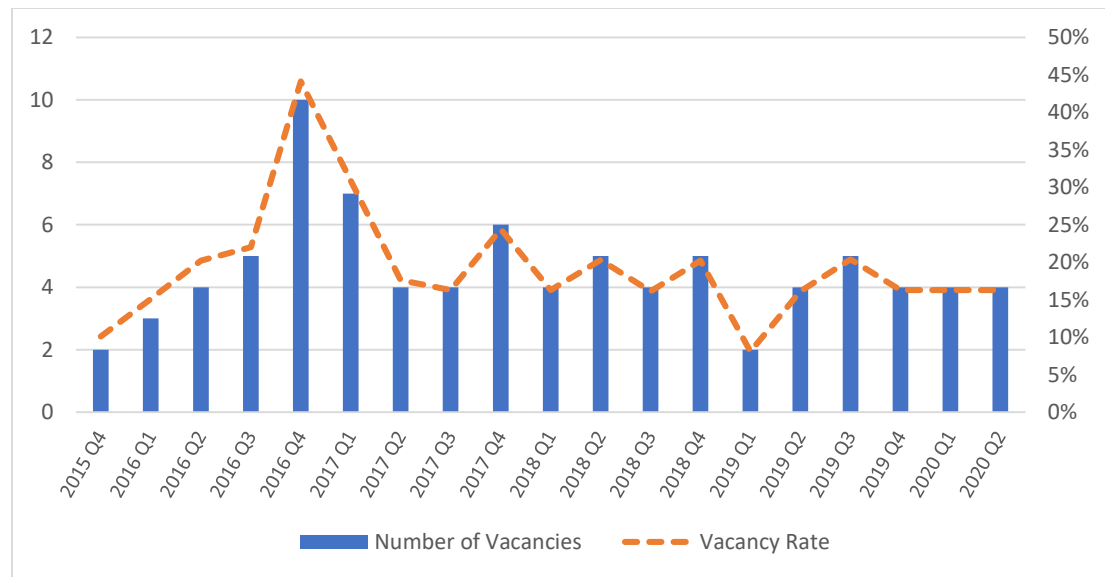
Source: City Budget System

High Vacancy Levels

In each quarter since October 2015, the Department has had at least two vacant positions and as many as 10. For any given quarter, the average number of vacancies in this period has been 4.45, which is approximately 19 percent of the department’s total of 24 full-time positions. The number of vacancies and vacancy rate each quarter are shown in Exhibit 10 below.³

³ For the purpose of this analysis, a position was considered vacant for a quarter if it was vacant for at least two full months in the quarter. The year and quarter shown correspond with the calendar year. For example, “2015 Q4” refers to October through December 2015, “2016 Q1” refers to January through March 2016, etc. The vacancy date appears to be manually maintained by the auditee and we are unable to verify its accuracy.

Exhibit 10: Ethics Commission Vacancies per Quarter, October 2015 – June 2020



Source: San Francisco Ethics Commission

As shown below vacancies have impacted each department function. The Enforcement and Engagement and Compliance Divisions, which each had six authorized positions as of FY 2019-20, have each averaged over one vacancy at any given time. The remaining three divisions, which have between two and four authorized positions, have averaged between 0.6 and 0.9 vacancies over the period. In addition, the Enforcement Division had an average of three vacancies per quarter in FY 2016-17, including a six-month period when all four investigator positions were vacant. Given the small size of each division, this level of vacancy impacts workflow. Average quarterly vacancies by division are shown in Exhibit 11 below.

Exhibit 11: Average Quarterly Vacancies by Division, October 2015 – June 2020

Year	Audits	Engagement and Compliance	Electronic Disclosure	Enforcement	Policy	Total
FY 2015-16*	-	1.67	1.00	0.33	-	3.00
FY 2016-17	1.00	1.00	0.25	3.00	1.25	6.50
FY 2017-18	1.50	1.25	1.25	0.75	-	4.75
FY 2018-19	0.75	1.75	-	0.50	0.75	3.75
FY 2019-20	1.00	0.50	0.75	1.00	1.00	4.25
Average	0.85	1.23	0.65	1.12	0.60	4.45
Vacancies as of June 2020	1.00	0.00	1.00	1.00	1.00	4.00
FTEs (FY 2019-20)	4.00	6.00	4.00	6.00	2.00	24.00**

Source: San Francisco Ethics Commission

*Based on 9 months of vacancy data (October 1, 2015 through June 30, 2016)

**Total FTEs includes two positions not under the divisions shown (Executive Director and Payroll Clerk)

As of June 2020, the Department had four vacant positions, including two positions that have been vacant for more than one year. These two positions (an investigator in the Enforcement Division and a policy analyst in the Policy Division) were the Department's top hiring priorities as of the February 2020 Commission meeting. However, hiring efforts were pending as of June 2020 due to the COVID-19 pandemic and associated revenue shortfalls in the City's General Fund. As of June 2020, Department management reports that recruitment is expected to continue for the 1053 IS Business Analyst-Senior position but the remaining three positions are likely to remain vacant to meet the Mayor's directive to cut operating budgets by 10 percent in FY 2020-21. An overview of vacant positions is shown in Exhibit 12 below.

Exhibit 12: Current Ethics Commission Vacancies, As of June 2020

Priority, As of Feb 2020	Division	Position	Vacancy Date	Months Vacant
1	Enforcement	1822 Investigator	2/25/2019	16
2	Policy	1822 Policy Analyst	5/1/2019	13
3	Electronic Disclosure	1053 IS Business Analyst – Senior	10/11/2019	7
4	Audit	1824 Principal Program Manager	9/17/2019	8

Source: San Francisco Ethics Commission

Time to Hire

Hiring timelines for positions in the Ethics Department are longer than those of other departments in the City, especially for job classifications in the administrative analyst series. Between March 2016 and August 2018, the median time between the date a position was posted online and the date a candidate was hired in the Department was 160 days (approximately 5.3 months), which is 42 days longer than the citywide median reported in a 2015 Controller's Office report (118 days).⁴ This comparison understates the additional time to hire for the Ethics Commission compared to other City departments because the Controller's calculated timeline begins when a department submits a Request to Fill (RTF) form to DHR, which occurs before the position online posting date. Before the online posting occurs, the RTF must be approved by DHR, the Controller's Office, and the Mayor's Office, and DHR must determine the appropriate job class and develop an examination.

Between March 2016 and August 2018, the Department hired 20 positions for which online posting dates were available (including internal hires), including 15 permanent civil service (PCS) positions and five permanent exempt appointments (PEX).⁵ PCS positions typically have longer hiring timelines compared to PEX positions because PCS positions are hired through an open and competitive examination and selection process, which is not required for PEX positions. Over this period, the median hiring time for 12 PCS administrative analysts was 183 days, which was 54 days longer than the citywide median for similar positions (119 days for budget, statistical, and administrative analysts). The Department also filled recruitments for information systems and management job classifications, but the number of recruitments filled in these classifications was too small to draw conclusions regarding differences to comparable citywide positions.

Mandates to Improve Ethics Laws and Programs

Changes to ethics laws, regulations, and programs have impacted the Department's workload. Since 2016, there have been a total of 15 changes to ethics laws, regulations, and programs. Although the Department's FTE position

⁴ Office of the Controller. *How Long Does it Take to Hire in the City and County of San Francisco*, April 2015.

⁵ Individuals hired to PCS positions receive civil service job protections and benefits upon hiring, and PEX positions do not carry the same benefits as PCS positions.

count has increased since 2016 by 4.68, from 19.85 to 24.53, including one new 1052 IS Business Analyst position⁶ to support implementation of electronic public disclosure programs, the Department has never been fully staffed over this period. Persistent vacancies contribute to delays in timely implementation of changes to ethics laws and programs, including Commission-initiated efforts, voter initiatives, and changes initiated by the Board of Supervisors.

Many of these program modifications required changes to regulations, forms and/or information systems, which require significant time and effort to implement. Eleven out of the 15 changes required changes to processes or forms that required outreach and/or information system enhancements. In addition, nine changes required updates to regulations, which required staff time to develop, obtain feedback from relevant stakeholders, and obtain approval from the Ethics Commission. Exhibit 13 below shows changes to ethics laws, regulations, and programs enacted since 2016.

Exhibit 13: New Legislation and Regulations Enacted 2016 – 2020

Title	Area	Enacted	Regulation Update	Process/ Form Update
Expenditure Lobbying Regulations Implementing Proposition C (2016)	Lobbying	Measure 11/3/2015; Regulations 4/29/2016	✓	✓
Whistleblower Protection Law Updates	Government Ethics/ Enforcement	Regulations 3/28/2016 Ordinance 12/21/2018	✓	
Ban on Candidate-Controlled General Purpose Committees	Campaign Finance	8/4/2016		
Lobbying Ordinance Ballot Measure – Proposition T (2016)	Lobbying	11/8/2016		✓
Behested Payments Reporting by City Boards and Commissions for the Solicitation of Charitable Contributions	Government Ethics	1/20/2017		✓

⁶ This position was funded by the City’s Committee on Information Technology

Title	Area	Enacted	Regulation Update	Process/Form Update
Harmonization of Sunshine, Ethics Training, and Form 700 Deadlines	Governmental Ethics	12/23/2017	✓	✓
No-File-No-Vote Ordinance	Governmental Ethics	3/16/2018		✓
Enforcement Regulations	Enforcement	3/19/2018	✓	
Anti-Corruption and Accountability Ordinance (ACAO)	Governmental Ethics	Ordinance 5/30/2018; Regulations 5/29/2019	✓	✓
Trustee Election Disclosures	Campaign Finance	9/14/2018		✓
Ethics Commission Opinion & Advice Regulations	Advice & Opinions	10/19/2018	✓	✓
Biennial Review of Form 700 Filer Lists	Governmental Ethics	11/20/2018		
Public Financing Program Review	Campaign Finance	Ordinance 5/10/2019; Regulations 7/30/2019; Ordinance 10/4/2019	✓	✓
Proposition F (2019)	Campaign Finance	11/5/2019	✓	✓
Form 700 Electronic Filing Project	Governmental Ethics	1/17/2020	✓	✓
Revision of Fixed Penalty Policy	Enforcement	Pending	Pending	Pending
Total Enacted (excluding pending)		15	9	11

Source: San Francisco Ethics Commission

Anti-Corruption and Accountability Ordinance Implementation

The Anti-Corruption and Accountability Ordinance enacted in May 2018 made 14 changes to City ethics laws. The Ordinance created new conflict-of-interest rules, campaign finance reporting requirements, and behested payment disclosures.

The Policy Division conducted policy research and stakeholder engagement over an 18-month period prior to enactment and also drafted regulations⁷ to facilitate implementation of the Ordinance, which were approved by the Commission at the April 2019 meeting. In addition, the Electronic Disclosure and Data Analysis and Engagement and Compliance Divisions developed nine new reporting processes to ensure effective compliance and public access to disclosure data. The Ethics Commission completed implementation in July 2019, approximately six months after the deadline of January 1, 2019.

Conclusion

The Ethics Commission has a high vacancy rate, which in a department with only 24 budgeted positions as of FY 2019-20, significantly impacts the Department's work. The average vacancy rate between FY 2016-17 and FY 2019-20 was 19 percent, and salary savings are projected to be 18.3 percent of the total salary budget in FY 2019-20. In order to meet the requirements of the City's ethics laws and mandates, the Department needs to be fully staffed, including shortening of timelines to recruit and hire new staff. Therefore, the Board of Supervisors should ensure that sufficient funds are available in the Department's budget to allow the Department of Human Resources to recruit and hire for vacant positions on behalf of the Ethics Commission.

Recommendations

The Board of Supervisors should:

Recommendation 4: Ensure adequate staffing in the Ethics Commission, including requesting the Mayor's Budget Office to (i) expedite approval of requests to fill vacant positions, and (ii) allocate the Department's salary savings to the work order with the Department of Human Resources to increase recruitment and hiring.

⁷ Approved by the Ethics Commission at the April 2019 meeting

3. Audits

The Department's procedure to conduct audits of election campaign committees is its main enforcement tool to detect violations of campaign finance laws, but long review timelines for discretionary audits compromise the effectiveness of this tool. In the 2016 election cycle, the average total audit length was approximately 21 months for discretionary audits, and the last audit report was not issued until December 2019, or more than three years after the election. Only one audit had been completed from the 2018 election cycle as of June 2020, but the Department was on track to complete these audits in a shorter timeframe as audit staff had reduced the average time to begin each audit by approximately 10 months compared to the 2016 election cycle. A lengthy audit process reduces the relevancy of potential findings for the public, as audits are completed long after the election occurred and also hinders the Department's ability to take enforcement action within the statute of limitations. We recommend enhancements to performance monitoring, staff training, and process documentation to further reduce audit timelines.

In addition, the Audit Division has not conducted a required lobbyist audit although they have taken steps in recent years to establish a lobbyist audit program. This reduces accountability for lobbyists and could result in underreporting of lobbyist activity. We recommend that the Department establish a lobbyist audit program and complete a lobbyist audit by the end of FY 2020-21.

Campaign Audits Are Not Completed Timely but the Audit Division Has Significantly Reduced Audit Timelines

The Department's procedure to conduct audits of election campaign committees is its main enforcement tool to detect violations of campaign finance laws, but long review timelines compromise the effectiveness of this tool. While timelines for discretionary audits have improved between the 2016 and 2018 election cycles, there is additional room for improvement. In the 2016 election cycle, the average total audit length was approximately 21 months, and the last audit report was not issued until December 2019, or more than three years after the election. Only one audit had been completed from the 2018 election cycle as of June 2020, but the Department was on track to complete these audits in a shorter timeframe as audit staff had reduced the average time to begin each audit by approximately 10 months compared to the 2016 election cycle.

A lengthy audit process reduces the relevancy of potential findings for the public, as audits are completed long after the election occurred and also hinders the Department's ability to take enforcement action within the statute of limitations, particularly if the Enforcement Division needs to conduct an investigation based on audit findings. The San Francisco Campaign and Governmental Conduct Code Section 1.168 (c) imposes a statute of limitations for administrative action (pursued by the Department) or criminal prosecution (typically pursued by the District Attorney's Office) of campaign violations of *four years after the campaign violation occurred*. For civil enforcement of campaign violations (typically only pursued by the City Attorney's Office), the statute of limitations is four years after an audit could begin or one year after a final audit report is issued. In addition, audits from the previous election cycle should be completed before the next election cycle candidate filing period begins, when auditors are needed to determine qualification for the public financing election program.

As of June 2020, the Department had not issued final audit reports for most of the 2018 election cycle discretionary audits, but the Department was on track to complete these audits in a shorter timeframe compared to 2016 election cycle audits based on improvements in interim audit milestones. For the 2016 election cycle, draft reports were completed for the 15 discretionary audits approximately 20 months on average after the audit cycle began (or when the audit letter was sent to committees informing them of their selection for the audit). For the 2018 election cycle, draft reports were completed for nine out of 11 discretionary audits approximately 10 months on average after the audit cycle began, a 50 percent reduction, but draft reports for the remaining two discretionary audits were still in progress as of June 2020. Because the time between the issuance of the draft report and the final report was relatively short for 2016 election cycle audits (approximately one month), we would expect the total audit timeline to be significantly shorter for 2018 election cycle audits.

Improvements in issuance of draft audit reports between the two election cycles were driven by a 10-month reduction in the time to begin preliminary review (or when an auditor begins work on a given audit). The average time to begin preliminary review declined from 14.4 months in the 2016 cycle to 4.3 months in the 2018 cycle, as shown in Exhibit 14 below. This is largely due to a process change that allowed auditors to work on multiple audits simultaneously in the 2018 election cycle. Previously, auditors' practice was to complete a draft audit

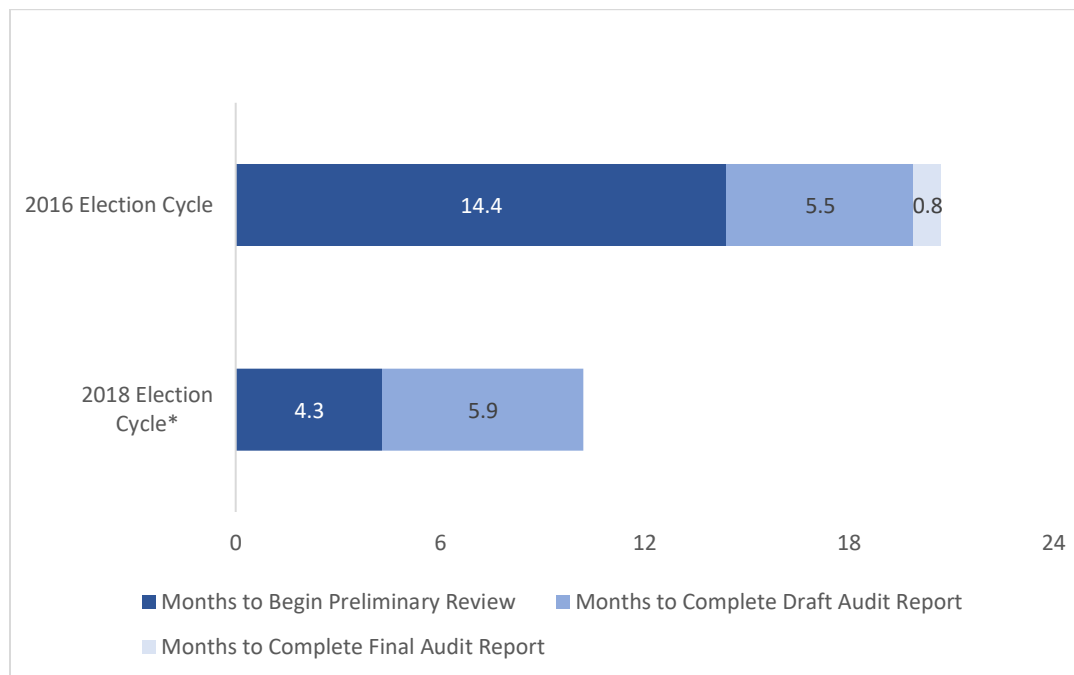
report before beginning work on the next audit, resulting in long timelines for audits completed later in sequence.

Staff performance and personnel transition in 2017 also contributed to longer timelines for the 2016 election cycle compared to the 2018 election cycle. Of the Division's four positions, at least one position was vacant during this period, including the supervisor position. The fact that the Audit Division was able to work on more audits at a time without increasing the time to complete the bulk of audit work (measured as the time between the start of preliminary review and issuance of the draft audit report) indicates that auditors worked more efficiently in the 2018 election cycle audits compared to the 2016 election cycle audits.

Exhibit 14 below shows the audit timeline split into three phases. The first phase shows the average time it took to start the audit, beginning with the audit letter being sent to the committee and ending with the start of preliminary review.⁸ The second phase shows the average time it took to complete the bulk of the audit work, beginning with the start of preliminary review and ending with submittal of the draft audit report to the election committee. The third phase shows the average time it took to finalize the audit, beginning with submittal of the draft audit report to the committee and ending with issuance of the final audit report.

⁸ For five audits in the 2016 election cycle, the preliminary review date is unknown. To calculate the timing of the various stages for these committees, the audit testing start date was used in lieu of the preliminary review start date.

Exhibit 14: Average Audit Completion Times by Phase (Months), 2016 and 2018 Election Cycles*



Source: San Francisco Ethics Commission

*Based on incomplete data for the 2018 election cycle audits. As of June 2020, all 2018 election cycle audits had completed preliminary review, but only nine of 11 audits had completed draft reports, including one audit with a completed final report.

Another possible factor for the completion time improvement in the 2018 election cycle is that the Department is conducting four fewer audits. In the 2018 election cycle, 11 committees with \$56 million in total campaign activity were selected for discretionary audits, compared to 15 in the 2016 election cycle, with campaign activity totaling \$34 million. The San Francisco Campaign and Governmental Conduct Code Section 1.150 (a) states that audits of non-publicly financed committees are at the Executive Director’s discretion. Starting with the 2016 election cycle, the Executive Director, with the Commission’s endorsement, shifted discretionary audit selection from random to objective criteria. In the 2016 cycle, the five committees with the highest expenditures in each of three categories (non-publicly financed candidate committees, ballot measure committees, and general-purpose committees) were selected for audit. In the 2018 cycle, audit selection was limited to committees that were not candidate-controlled with over \$1 million in reported expenditures. We could not determine if the change in audit selection criteria had any impact on audit timelines or resulted in more substantial audit findings because only one of the 2018 election cycle audits had been completed as of June 2020.

Improvements in Audit Tracking

The Executive Director implemented a standardized method for tracking audit work beginning with the 2016 election cycle audits. Starting in April 2017, the audit division began maintaining a spreadsheet to track interim milestones in the audit process and set goal timelines for completing some but not all milestones. This tool also enhances oversight of the process as management can use it to obtain information on the status of ongoing audits and to measure progress in improving efficiency over time.

In May 2017, Ethics Commission staff discovered draft audit reports prepared for the 2012 election cycle that had never been sent to the committees to review. These audit reports were finally completed and issued in June and July 2017, more than four and a half years after the election. The Division's enhanced audit tracking and management oversight can help reduce the opportunity for such lapses in the future.

Exhibit 15 below shows the audit stages tracked by the Audit Division, as well as the actual time to complete each stage compared to the expected time to complete. Note, time to complete audit stages do not add to the total audit timeline because there is overlap between some audit stages (such as audit testing and workpaper documentation) and time between stages is not consistently captured. In addition, the data in the audit trackers is manually maintained by Department staff and could contain data entry errors.

Exhibit 15: Overview of Audit Process

Stage	Description	Expected Time to Complete	Average Days to Complete	
			2016 Cycle	2018 Cycle
Audit Initiation/ Receipt of Audit Records	Committees provide financial records, such as unredacted bank statements, invoices, and check copies, after the Department sends a letter informing them they have been selected for audit.	*	156.8** (median 21)	34.3
Preliminary Review	Auditors perform a cursory review of records to check for completeness, as well as a reconciliation of bank records with committee filing statements.	Varies by committee, 1 day – 1 week	8.8	19.6
Audit Testing	Auditors test to verify that campaign statements are verified by financial transactions.	Varies by committee, 1-6 weeks	51.0	13.6

Stage	Description	Expected Time to Complete	Average Days to Complete	
			2016 Cycle	2018 Cycle
Workpaper Documentation	Auditors work through the Audit Notes Document, which is a template for filling out the Draft Audit Report. This stage is done concurrently with the Preliminary Review and Audit Testing but may be completed after those stages.	1 week	43.0	38.0
Initial Draft Audit Report	Auditors use the Audit Notes Document to complete the Initial Draft Audit Report. The report is reviewed by the Audit Division supervisor and then by the Executive Director.	1 day to complete - no benchmark for supervisor or ED review	94.9	78.9
Draft Audit Report Sent to Committee	The Draft Audit Report is sent to the committee, which may provide comments and respond to any findings. Auditors review the committee responses and may amend the report if warranted. The Audit Division supervisor reviews the auditor’s response to committee comments, which is incorporated into the Final Audit Report. In the 2016 cycle, auditors would request additional information from the committees before submitting the Draft Audit Report. However, this practice was applied inconsistently, and starting with the 2018 cycle, it has been done as part of the Draft Audit Report stage.	*	16.2	21.0
Final Audit Report Issued/ Audit Closeout	Auditors complete the Final Audit Report and send it to the committee. An exit conference is held with the committee, which is typically a brief phone call. The committee may provide additional comments, but at this point the Final Audit Report will not change. The report is posted on the Ethics Commission website, and the Enforcement Division is notified of any material findings.	*	*	*

Source: San Francisco Ethics Commission

*Not established/measured in the audit tracker

** According to the 2016 Audit Tracking Sheet, it took three committees 470, 539, and 685 days, respectively, to complete the Audit Initiation stage. It is unclear if these committees were unresponsive to the letter, or if their responses were not accurately tracked by audit staff. These three committees heavily skew the average time to complete Audit Initiation. The median time to complete Audit Initiation for the 2016 election cycle was 21 days.

For the Preliminary Review and Audit Testing steps, the time it has taken to complete is roughly in line with the Audit Division’s expectations. The time for

Workpaper Documentation in both cycles is significantly greater than the Department's expectation. However, this step is done concurrently with the Preliminary Review and Audit Testing steps, so it may not be a useful metric on its own. The Initial Draft Audit Report stage took an average of approximately 95 days in the 2016 cycle and approximately 79 days in the 2018 cycle. A key bottleneck in this process appears to be the Executive Director's review. The data is incomplete, but for audits in which it was tracked, it took the Executive Director an average of approximately 67 days to review the 2016 Initial Draft Audit Reports and approximately 55 days to review the 2018 Initial Draft Audit Reports.⁹ The Audit Division has not established a goal for Executive Director review but should consider doing so to avoid future bottlenecks in the audit process.

In addition to the interim milestones shown in Exhibit 15, the Audit Division also tracks the total length of time to complete each audit, starting with the date the audit letter is sent to the committee and ending with the date of the Final Audit Report issuance. However, the Department has not established a goal for this measure, so we cannot assess their performance against a defined goal. In comparison, the Los Angeles City Ethics Commission policy is to complete audits within six months, from the audit start date to the draft report.

We recommend that the Department establishes overall goals for completing audits and monitor results in relation to goals. We also recommend that the Department establish goals for all interim audit milestones, including the Executive Director's review of initial draft audit reports.

The Audit Division Has Not Completed a Required Lobbyist Audit

To date, the Audit Division has not completed a lobbyist audit although the San Francisco Campaign and Governmental Conduct Code Section 2.135 (c) requires that the Department conduct at least one lobbyist audit per year. In 2015 and 2016, four lobbyists were selected each year for an initial audit of lobbying activity in the previous year, but the audits were never conducted due to insufficient staffing resources, the lack of a permanent supervisor in the Audit Division, and prioritization of discretionary campaign audits according to memos submitted to the Commission. Department management reports that recent efforts identified

⁹ For the 2018 cycle, the average time for the Executive Director's review is skewed by two Draft Audit Reports that took 131 and 145 days, respectively. The reports underwent several rounds of review and revisions. The median time for Executive Director's review is approximately 38 days. Excluding these two reports, the average time is approximately 27 days.

in performance documents to establish a lobbyist audit program in FY 2019-20 have been delayed due to the COVID-19 pandemic and the Shelter-in-Place order.

The nature of lobbying activity and what is required to be disclosed makes it more difficult to verify the accuracy of lobbyist disclosures compared to campaign filings. For example, while campaign filing statements can be tested against bank records, invoices, and check copies, lobbyist activity is typically self-reported, and it is difficult to prove that meetings occurred between lobbyists and City officials. This reduces accountability for lobbyists and could result in underreporting of lobbyist activity.

The Audit Division submitted a memo to the Executive Director in January 2020 that outlined key considerations for establishing a lobbyist audit program, including the number of audits to conduct, how lobbyists would be selected, and potential audit testing methods. The Department would have to decide between a purely random selection, which would place all lobbyists on notice that they may be audited, or selective criteria, that targets the most active lobbyists, but indicates to less active lobbyists that they are unlikely to be audited. According to the memo, testing procedures could include reviewing lobbyist statements and reconciling them with calendars, phone logs, email correspondence, Form 700 filings, and Behested Payment Filings.¹⁰ Auditors could review records to test for lobbyist registration date, compensation received, activity expenses,¹¹ gifts to public officials, political contributions, contacts of public officials, and expenditures made. The staff memo recommended that the Audit Division select lobbyists to audit based on selective criteria rather than random selection, such as auditing 10 percent of the most active lobbyists on an annual basis.

The Audit Division had planned to commence a pilot lobbyist audit by the end of FY 2019-20, but the audit has been delayed due to the COVID-19 pandemic and the Shelter-in-Place order. As of June 2020, the Executive Director has not yet reviewed the January 2020 memo, and a lobbyist has not been selected for the

¹⁰ A “behested payment” is defined in Section 3.600 of the San Francisco Campaign and Governmental Conduct Code as “a payment that is made at the behest of an officer, or an agent thereof, and that is made principally for a legislative, governmental, or charitable purpose.”

¹¹ An “activity expense” is defined in Section 2.105 of the San Francisco Campaign and Governmental Conduct Code as “any expense incurred or payment made by a lobbyist or a lobbyist’s client at the behest of the lobbyist, or arranged by a lobbyist or a lobbyist’s client at the behest of the lobbyist, which benefits in whole or in part any: officer of the City and County; candidate for City and County office; aide to a member of the Board of Supervisors; or member of the immediate family or the registered domestic partner of an officer, candidate, or aide to a member of the Board of Supervisors.”

initial audit. We recommend that the Department approves a process and procedures for a lobbyist audit program and conducts an initial lobbyist audit by December 31, 2020.

Lobbyist Programs in Other Jurisdictions

Despite challenges in audit testing discussed above, other jurisdictions have developed lobbyist audit programs and conducted these audits. In every two-year audit cycle, the California Fair Political Practices Commission (FPPC) is required to randomly audit 25 percent of lobbyists registered with the Secretary of State, and the Franchise Tax Board (FTB) conducts these audits on behalf of the FPPC. However, due to limited staffing resources, the FTB has been unable to complete all required audits in recent years according to interviews. FTB staff report that they have completed approximately 50 audits out of the 314 lobbyist firms and lobbyist employers selected for the 2017 audit and no audits have been completed for the 2019 audit selection. The states of Connecticut, Indiana, and Tennessee also have mandatory lobbyist audit programs and have completed such audits.¹²

In addition, the Los Angeles City Ethics Commission has the authority to conduct lobbyist audits although they are not required. According to interviews with Los Angeles City Ethics Commission staff, the Enforcement Division, which has subpoena power, conducts audit-like investigations to identify lobbyists that have failed to register or report lobbying activity and take enforcement action. In some cases, these investigations are complaint driven. In other cases, they are driven by proactive staff review of documents, such as calendars and meeting minutes, to identify potential lobbying activity that is not being reported. The Los Angeles City Ethics Commission does not have a regular lobbyist audit cycle or selection process and does not have documented lobbyist audit testing procedures.

In addition, the City of San Diego had a mandatory program to audit the reporting of gifts from lobbyists to City officials, but audits were suspended in 2008 after the City amended lobbying laws to prohibit these gifts, rendering the audits unnecessary.

¹² As of June 2020, Tennessee had issued audit reports as recently as 2018, Indiana had worked on audits as recently as 2019, and Connecticut had selected lobbyists to audit in 2020

The Division Does Not have a Formal Training Program or Updated Audit Manual

The Audit Division does not have a formal training program. The Department does not offer any audit-specific training to staff or require staff to attend specific trainings provided by other entities. Department management reports that employees may self-identify trainings that may be useful for their professional development, but other than ethics trainings required for all staff, the Department does not require any specific trainings. According to training records for FY 2018-19 and FY 2019-20, the Department required all Department staff to complete DHR's online training on Ethics and Sunshine laws and an online training on cyber security, but the Lead Auditor was the only audit staff member that received any audit-specific training. The Lead Auditor attended an online training series by a professional association of internal auditors in July 2019, but the trainings provide general information and were not specific to campaign audits or the Department's audit process. Most trainings attended by other audit staff were provided by DHR and included topics such as project management, productivity, and harassment prevention. By conducting informal training, the Audit Division relies on its current staff's institutional knowledge to train future staff. It is conceivable that all three current staff members depart in short succession, leaving the Audit Division with a lack of institutional knowledge.

In addition, the Division's Audit Manual was last updated in 2005 and is out of date. For example, the Audit Manual does not include any reference to the contribution limits or bans that were part of the Anti-Corruption and Accountability Ordinance, and it includes references to sections of the Campaign Finance Reform Ordinance that have been repealed. While the Division has several documents to assist auditors, such as the 2017 Audit Checklist, Audit Notes Templates, List of Audit Tests, and Overview of an Audit, it does not have a Standard Operating Procedure to guide auditors through the step-by-step process. Written policies and procedures are an important tool for management to communicate policies and expectations to staff and an important reference guide for staff, particularly new staff. They also ensure staff perform the same tasks consistently and smooth transitions resulting from staff turnover.

Audit Division staff report that they have been working with the Electronic Disclosure and Data Analysis (EDDA) Division to streamline its processes and plan to develop a new Audit Manual after the November 2020 election. Staff also report that EDDA has developed an initial electronic system to track audit tasks and was in the process of developing standardized templates as of June 2020. We

recommend that the Department develops a Standard Operating Procedure that provides auditors with a step-by-step guide to conduct audits.

Conclusion

The Ethics Commission improved processes and reduced the timeline for completing audits between 2016 and 2018. Because timely completion of audits is important to ensure the relevancy of audits and avoid missing statutory deadlines, the Department should establish total audit timelines, including Executive Director review, in addition to existing timelines set for phases of the audit process. The Department also needs to approve procedures for lobbyist audits to conform to the City's Campaign and Government Code.

Recommendations

The Executive Director should:

Recommendation 5: Establish overall goals for completing audits as well as goals for review of audit reports by the Executive Director, and report on results in relation to goals after completion of each audit cycle to the Ethics Commission.

Recommendation 6: Approve procedures for a lobbyist audit program and conduct an initial lobbyist audit by the end of FY 2020-21.

Recommendation 7: Develop an updated audit manual or standard operating procedure that provides auditors with a step-by-step guide to conduct audits.

Recommendation 8: Establish a formal training program for the Audit Division, which includes: (a) identification of training needs based on discussions with the acting audit supervisor and auditors; (b) training goals for each employee; (c) A process for tracking progress towards achieving training goals; and, (d) a process for routinely evaluating, updating, and revising the training program.

4. Investigations

The Enforcement & Legal Affairs Division takes more than two years on average to conduct a preliminary review and complete investigations of alleged violations of ethics laws, campaign finance laws, and other relevant laws under its purview. Our review focused on complaints for which investigators determined there was sufficient evidence to open an investigation and excludes complaints that were dismissed during preliminary review. The length of time to close investigations combined with other factors, such as Division vacancies, has prevented the Enforcement Division from resolving as many investigations as it opens in a given year, with some investigations taking several years to resolve. Between 2017 and 2019, the Division opened more than twice as many investigations as it closed, resulting in an increase in the number of prior-year cases carried forward into subsequent years. The number of prior-year cases carried into 2020 (88) was nearly three times the number of cases closed in 2019 (30). Timely resolution of ethics investigations is important for promoting public confidence in government and realizing the deterrence effect of enforcement.

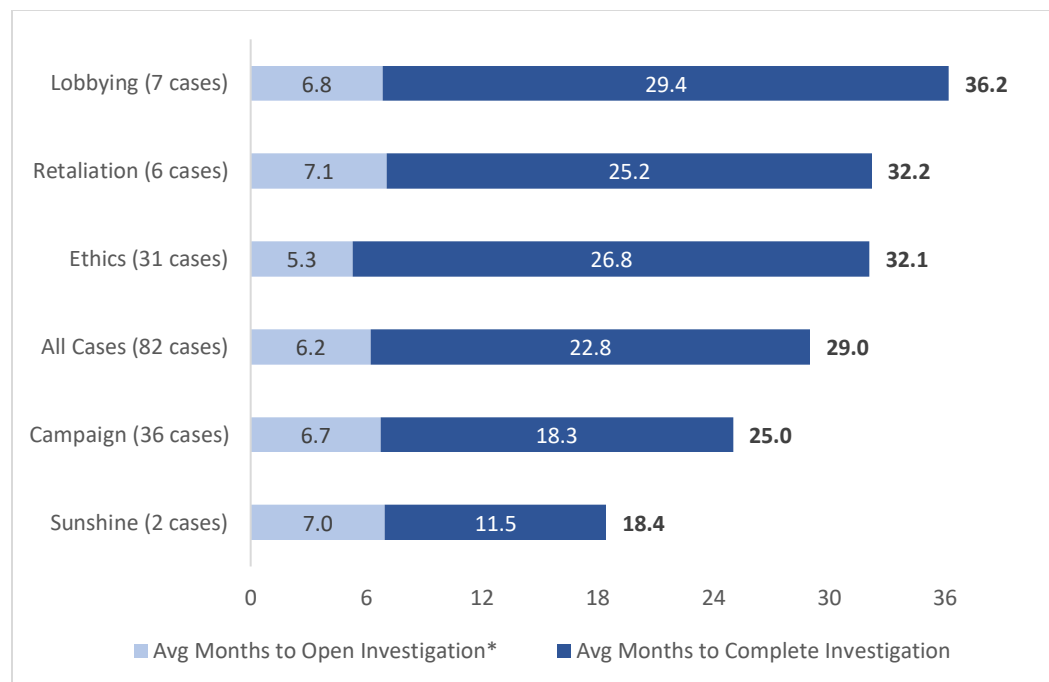
We recommend a number of changes to improve the efficiency of the Enforcement & Legal Affairs Division, such as expansion of the number of violations that undergo a streamlined enforcement process and fixed penalty, and enhanced training for investigators.

Investigations Take More Than Two Years on Average to Resolve

The Enforcement & Legal Affairs Division takes more than two years on average to resolve investigatory matters—including preliminary review and completion of investigations of alleged violations of ethics laws, campaign finance laws, and other relevant laws under its purview. Our review focused on complaints for which investigators determined there was sufficient evidence to open an investigation and excludes complaints that were dismissed during preliminary review. The length of investigations combined with other factors, such as Division vacancies, has prevented the Enforcement & Legal Affairs Division from resolving all or most of the investigations that are open in a given year, with some investigations taking several years to resolve. Timely resolution of ethics investigations is important for promoting public confidence in government and realizing the deterrence effect of enforcement. In addition, delays in beginning these investigations can impair case outcomes, as evidence (including testimonial evidence from witnesses) may be more difficult to collect for older cases.

The Division took an average of 29 months (2.4 years) to complete investigations for 82 cases over the three-year period of our review.¹³ This timeline includes approximately six months to open¹⁴ the investigation after the alleged violation is received (typically through a complaint) and an additional 22 months to close the investigation after it is opened. Our analysis includes 117 investigations that were initiated sometime between 2017 and 2019 and an additional 24 cases that were unresolved from prior years, for a total of 141 cases. As of June 2020, the Division had closed 82 (58 percent) of these cases and the remaining 59 cases (42 percent) were still open. Exhibit 16 below shows the average number of months to resolve opened investigations by case type.

Exhibit 16: Average Months to Resolve Opened Investigations, 2017-2019



Source: San Francisco Ethics Commission
 *Includes complaint intake and preliminary review

As shown above, the majority of cases closed over the period were alleged violations of campaign laws (36 cases) and ethics laws (31 cases). Campaign cases were resolved in 25 months on average, compared to 32 months on average for

¹³ This average is for all cases that were open in 2017 through 2019. 24 cases that were opened prior to 2017 and remained open after 2017 were included. This analysis does not account for cases that were opened and closed prior to 2017, which may have had different average resolution timelines.

¹⁴ For the purposes of our analysis, the date the investigation is considered opened by the Enforcement Division is defined as the date it is referred to the City Attorney (CA) and District Attorney (DA), which occurs after completion of the Division’s preliminary review.

ethics cases, a difference of 7 months. Campaign cases may be resolved more quickly on average compared to ethics cases because of the Division's Fixed Penalty Policy that streamlines the settlement process for some campaign violations. In addition, some campaign cases are referred to the Enforcement Division after the Audit Division has identified material findings from campaign audits, which may reduce the amount of work required to investigate these cases.

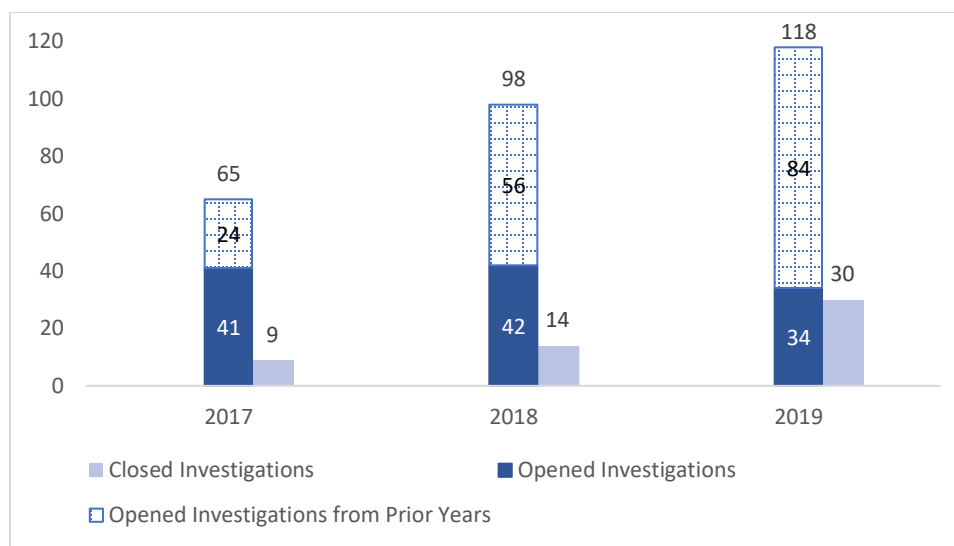
Investigators Resolved a Small Portion of Open Investigations in Recent Years

Between 2017 and 2019, the Division opened more than twice as many investigations as it closed, resulting in increases in the number of investigations that are carried forward from prior years. The number of prior-year cases carried forward increased from 24 cases carried into 2017 to 84 cases carried into 2019. We note that the number of prior-year cases carried forward includes cases that are only a few months old and others that are several years old, but the increase in the number of prior-year cases carried forward shows the impact of closing fewer investigations than are opened each year. Position vacancies contributed to low rates of case closure over the period, particularly in 2017, as the Division was rarely fully staffed over the period.¹⁵ Over a six-month period from October 2016 through March 2017, all four investigator positions were vacant, with each position vacant for a period of time ranging between seven and 11 months.

With current processes and staffing levels (three filled investigator positions out of four authorized), the Division will not be able to substantially reduce the number of unresolved cases from prior years. While the Division has reduced the gap between the number of cases opened and the number of cases closed, the gap still persisted in 2019 when the number of cases closed (30) was equal to 88 percent of the number of cases opened (34). The number of prior-year cases carried into 2020 was 88, or nearly three times the number of cases closed in 2019. Exhibit 17 displays both the number of investigations opened from 2017 through 2019 as well as the number of investigations carried forward from prior years.

¹⁵ In the period from May 2016 to April 2020, the Department's position vacancy report shows that there were only five months in which all five authorized positions within the Division—including four investigators and one director—were filled, including July and August 2017, March and August 2018, and February 2019.

Exhibit 17: Rate of Investigation Resolution, 2017-2019



Source: San Francisco Ethics Commission investigation records

In addition to completing investigations, the Division has a sizable workload associated with reviewing alleged violations that do not result in an opened investigation. Over the three-year period from 2017 through 2019, the Division conducted some level of review on a total of 324 complaints, with nearly two-thirds (202) being dismissed without an opened investigation. In addition, three of the complaints were withdrawn by the complainant and 22 cases were still in preliminary review (as of June 2020) that could result in an opened investigation or dismissal.

Other Jurisdictions Have a Higher Investigation Closure Rate than San Francisco

Other jurisdictions outperform San Francisco in their ability to resolve at least as many cases as they open each year, resulting in fewer cases carried over from prior years. On average, San Francisco closed about half as many cases as it opened between 2017 and 2019, with a high of 88 percent in 2019. In San Diego, for instance, the Ethics Commission closed more investigations than it opened on average between 2017 and 2019, for an average annual closure rate of 106 percent over the three-year period. The San Diego Ethics Commission has one investigator who handles cases from beginning to end. The Los Angeles City Ethics Commission also closed more investigations than it opened between 2018 and 2019, for an average annual closure rate of 117 percent over two years. The Los Angeles City Ethics Commission has a comparable Enforcement Division staff size as San Francisco of four investigators, along with a deputy director and director of enforcement.

The California Fair Political Practices Commission (FPPC) is the state entity that enforces political campaign, lobbying, and conflict of interest laws. They are able to resolve more investigations than they have opened in recent years, with an average annual closure rate of 120 percent. We note that the FPPC has a significant enforcement staff of two working supervisors—one for eight full-time attorneys and one for eight full-time investigators.

The Enforcement Division Does Not Have Benchmarks for Completing Interim Steps for Investigations

Limited Tracking of Time for Interim Investigatory Steps

The Enforcement & Legal Affairs Division does not track the time involved in each interim step associated with evaluating a complaint as well as initiating and completing an investigation, and therefore, does not have a full understanding of the points at which delays may occur. The absence of a process for the Division to track and evaluate the amount of time for interim investigation steps prevents the Division from setting goals as they relate to the completion of these steps. In addition, the Division has not established overall goals for the time to resolve investigations, so we cannot assess their performance against goals.

The Division's enforcement docket includes 25 data fields, with seven fields tracking start or end dates, deadlines, or months elapsed as follows:

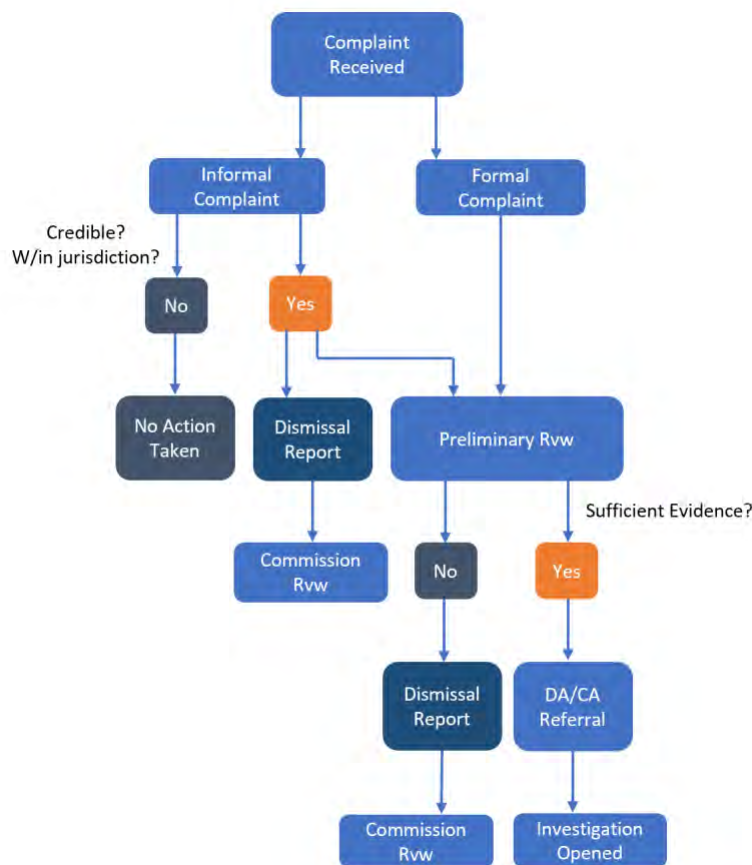
- Date Received
- City Attorney/District Attorney Referral Date (or Date Investigation Opened)
- Statute of Limitations
- Probable Cause Report Date
- Hearing on the Merits Date
- Closure Date
- Months Open

While the Division does track the date that preliminary review commences and concludes on each report, this tracking is not done in a systematic way that would enable the Division to determine how much time, on average, elapses between the time a complaint is received and preliminary review begins, and how long the

preliminary review process takes.¹⁶ The Division also does not track the amount of time involved for management review of reports by the Enforcement Director and Executive Director.

In Exhibit 18 below, we display the process for how complaints become open investigations and in Exhibit 19, we display the process for an open investigation to be resolved. Every proposed case resolution requires the preparation of a report that must be reviewed by management and approved by the Commission, but as we note, time for management review is not systematically tracked by the Division in order to assess average review timeframes against a benchmark. Further, the Department does not have a benchmark or goal for the length of time it should take for a received complaint to undergo a preliminary review or for the completion of other interim steps.

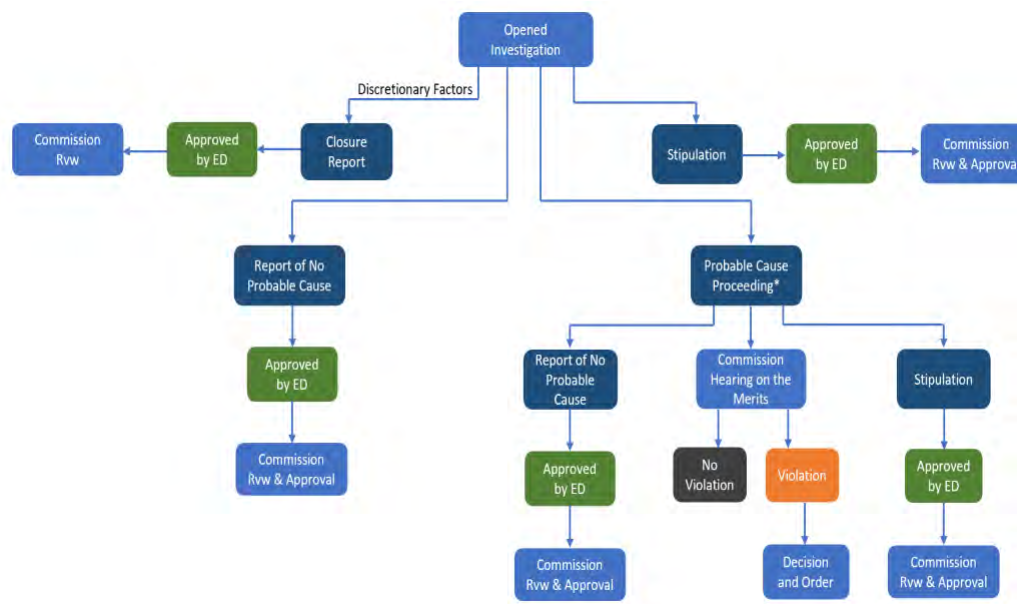
Exhibit 18: Process for Complaints to Become Investigations



Source: San Francisco Ethics Commission

¹⁶ As noted above, the time between receipt of a complaint and opening of an investigation is six months on average, which represents the preliminary review period.

Exhibit 19: Process for Investigations to be Resolved



Source: San Francisco Ethics Commission

*A probable cause report from Division staff initiates a probable cause proceeding. The proceeding may consist of a written response from the respondent(s) and a rebuttal from Division staff.

Enforcement Division Performance Goals

The Division does not have defined goals for the length of time expected for completing investigations or interim investigatory steps, such as completing preliminary review of complaints. The Department does specify goals related to the length of time to resolve investigations in the annual performance review for individual investigators, but these goals do not apply to the Division as a whole. The goals related to timelines in a sample of FY 2019-20 performance review include the following:

- Draft thorough and accurate preliminary review reports for all complaints assigned within six weeks of receipt.
- By December 31, 2019, draft a thoroughly prepared and near-final proposed settlement, proposed probable cause report, proposed closure report, or proposed lack of probable cause report for all open investigations older than 24 months.

We could not assess if the Division as a whole is meeting these two goals because the Division does not systematically track when preliminary review cases are assigned to investigators and when they complete the draft preliminary review report, or when they complete draft settlements or other draft reports for open

investigations. As shown above, it took an average of six months to prepare and send preliminary review reports to the City Attorney and District Attorney for opened cases between 2017 and 2019. However, this includes time before the case was assigned to an investigator and time for internal review by the Enforcement Director. In addition, as of January 2020, there were 28 open investigations older than 24 months. However, we could not determine how many of these have draft settlements or other draft reports completed.

Further, we note that the Division recently specified timelines for review of stipulation and closure reports by the Executive Director in February 2020, specifying two days and five days, respectively. However, the Division will need to begin tracking the report review process in order to assess if they are meeting this goal.

We recommend that the Department establish overall goals for completing investigations and monitor performance in relation to goals. We also recommend that the Department establish goals for interim milestones, such as completing preliminary review reports, and enhance investigation tracking to capture these milestones.

Criteria for Prioritizing Complaints and Investigations Should be Monitored to Ensure Effectiveness

Criteria for Prioritizing Complaints Recently Established

In August 2019, the Commission adopted six factors to guide case prioritization, but the Division has provided limited written guidance on how staff will apply these criteria. Because the Division is not able to complete all investigations in a timely manner, establishing a clearly defined process for prioritizing investigations is critical for completing the highest priority investigations in advance of lower priority investigations. Long delays in beginning these investigations can impair case outcomes, as evidence (including testimonial evidence from witnesses) may be more difficult to collect for older cases. However, case prioritization criteria that are subjective or not well defined could result in inconsistent application of the criteria and the appearance of partiality.

At the request of the Commission Chair, the Enforcement & Legal Affairs Division developed the following six criteria adopted by the Commission in August 2019:

- Severity of the alleged violation
- Impact of a Commission decision

- Timing of alleged misconduct
- Availability of a meaningful remedy
- Probability of substantiating allegations
- Availability of enforcement resources

The Division began applying these criteria in September 2019 for cases in preliminary review as well as opened investigations. Prior to September 2019, the Division investigated all complaints with sufficient evidence in the order in which they were received. We reviewed summaries of complaint dismissals and investigative closures that relied upon these prosecutorial discretion factors. While we find them to be relevant factors to consider, we recommend that the Department consider revisiting the criteria within 18 months of implementation in order to assess the impacts of the criteria and how they are applied, such as which types of cases are closed based on which factor(s). This review would help to ensure that the criteria are achieving the desired intent of focusing the Division's limited resources on the most significant cases and that they are applied in a standardized fashion for all cases. The Division may also consider more detailed written guidance for investigators on how to apply the criteria in a standardized fashion. The benefit of developing further guidance related to application of the case prioritization criteria is that it would promote public confidence that all cases are treated in an impartial manner.

The San Francisco Ethics Commission's case prioritization criteria are similar to the criteria used by the FPPC and the Oakland Public Ethics Commission according to our review of their policies and interviews with staff. The Oakland Public Ethics Commission also prioritizes enforcement activities (using factors listed below) but goes further than the San Francisco Ethics Commission and the FPPC in that they apply a numeric priority level to cases and schedule them for completion, accordingly.

Oakland Public Ethics Commission

The Oakland Public Ethics Commission assigns a numeric value to delineate the level of priority (low, medium, or high), based on the below-listed factors including any applicable statute of limitations, the impact of a Commission decision, along with an estimation of staff time required to complete an investigation (small, medium, or large amount of time). A point-value score is then allocated to each criterion, including the priority level and staff time needed, so that higher priority cases and cases that are expected to take a small amount of time receive lower point values. For example, a high-priority case that would take a small amount of

staff time would receive a score of two and be placed at the top of the priority list. The Oakland Public Ethics Commission divides their priority list by quarters within the year, with cases assigned to a particular quarter in which to be completed. Under this system, level two cases would be processed first, then level three, four, and five. The criteria used by the Oakland Public Ethics Commission are listed below.

- the extent of Commission authority to issue penalties;
- the impact of a Commission decision;
- public interest, timing, and relevancy; and
- Commission resources.

A Fixed Penalty Policy Streamlines Investigations

San Francisco’s Fixed Penalty Policy Only Applies to Five Types of Violations

A fixed penalty policy streamlines the amount of time it takes to complete settlements—the final stage of most investigations that substantiate violations—but the Division is not maximizing the benefits of a fixed penalty policy. A fixed penalty policy enables certain violations of ethics laws to be resolved through a defined penalty schedule in order to reduce the uncertainty and time that negotiating a settlement might otherwise entail, according to a memo dated December 13, 2019 prepared by Division staff. For cases subject to the Commission’s Fixed Penalty Policy, the respondent has 14 days after receipt of a proposed stipulation to provide evidence that there is no violation, and, in the event that the respondent declines to settle, the Division has 21 days to issue a probable cause report after the 14-day response window. Cases that are not subject to the Fixed Penalty Policy may take several more months to negotiate a settlement, based on our interviews with investigative staff. The Department can ensure that more complaints are processed in an expedited manner by broadening its Fixed Penalty Policy as proposed by Enforcement Division staff.

The San Francisco Ethics Commission established a fixed penalty policy in 2013 and, as of June 2020, uses the policy for five types of campaign-related violations of the San Francisco Campaign and Governmental Conduct Code (SF C & GCC) as shown in Exhibit 20 below. These include violations of contributions limits, loan limit violations, and disclaimer violations. As of June 2020, the Ethics Commission is in the process of considering an expansion of its fixed penalty policy to encompass not only campaign finance violations, but also lobbying and the conduct of government officials and employees, which would bring them in line with the FPPC’s Streamlined Penalty Policy, as discussed below. Possible areas for

expansion of the fixed penalty policy were listed in a staff memo and reproduced below in Exhibit 20.

Due to the confidentiality of case materials, we were unable to determine how many investigations opened by the Enforcement & Legal Affairs Division over the last three years would potentially become newly eligible for the Fixed Penalty Policy as a result of the Department's proposed expansion. However, it would be worthwhile for the Department to determine how many cases would likely become newly eligible for the Fixed Penalty Policy in order to have an understanding of the potential benefit of this policy change in enabling the Division to complete more investigations faster.

Exhibit 20: Existing & Proposed Cases Subject to Fixed Penalty as of June 2020

As of 2013, Fixed Penalty Policy Includes:

Election Campaigns

1. Contribution limit by candidate (SF C&GCC § 1.114(a)-(b))
2. Contribution limit by contributor (SF C&GCC § 1.114(a))
3. Contributor information disclosure (1.114.5)
4. Candidate self-lending (SF C&GCC § 1.116)
5. Disclaimers on campaign advertisements/mass mailings (SF C&GCC § 1.161) and on electioneering communications (SF C&GCC § 1.162)

Proposed Expansion of Fixed Penalty Policy to Include:

Election Campaigns

1. Campaign statement non-filing (SF C&GCC §§ 1.106, 1.135; Gov't Code § 84200)
2. Major donor notification (SF C&GCC § 1.106; Gov't Code § 84105)
3. Campaign statement omission (SF C&GCC § 1.106)
4. Committee incorrectly named (SF C&GCC § 1.106; Gov't Code § 84102(a))
5. Cash contribution or expenditure of \$100 or more (SF C&GCC § 1.106; Gov't Code § 84300)
6. Candidate and Treasurer Training (SF C&GCC § 1.107)
7. Failure to create Campaign Contribution Trust Account/ make expenditures (SF C&GCC § 1.108)
8. Campaign recordkeeping (SF C&GCC § 1.109; Gov't Code § 84104)
9. Payment of accrued expenses beyond deadline (SF C&GCC § 1.118)
10. Legal defense fund contribution limit violations (SF C&GCC § 1.120)
11. Pre-candidacy fundraising (SF C&GCC § 1.122(a))
12. Improper expenditure (SF C&GCC § 1.122(b))
13. Bundled contributions reporting (SF C&GCC § 1.125)
14. Contractor contribution (SF C&GCC § 1.126)
15. Campaign consultant non-filing (SF C&GCC § 1.515)

Lobbying

16. Lobbyist registration disclosures or updates (SF C&GCC § 2.110(a), (b), (d))
17. Lobbyist report non-filing (SF C&GCC § 2.110(c))
18. Lobbyist report omission/failure to update (SF C&GCC § 2.110(c)-(d))
19. Lobbyist contribution (SF C&GCC § 2.115(e))
20. Lobbyist bundling (SF C&GCC § 2.115(f))
21. Lobbyist Training (SF C&GCC § 2.116)
22. Lobbying by campaign consultant (SF C&GCC § 2.117) & Lobbyist recordkeeping (SF C&GCC § 2.135)

Conduct of Government Officials and Employees

23. Statement of Economic Interest non-filer (SF C&GCC §§ 3.102, 3.242)

24. Statement of Economic Interest omitted interest (SF C&GCC §§ 3.102, 3.242)
25. Conflict of interest recusal procedural noncompliance (SF C&GCC § 3.209(a))
26. Conflict of interest recusal notification non-filing (SF C&GCC § 3.209(b))
27. Gift limit (SF C&GCC § 3.216(b))
28. Gifts of travel reporting disclosures (SF C&GCC § 3.216(d))
29. Permit consultant registration and disclosure (SF C&GCC § 3.410)
30. Major developer disclosure (SF C&GCC § 3.520)
31. Behested payment report non-filing by officer (SF C&GCC § 3.610(a))

Source: Enforcement staff memo presented to Ethics Commission in December 2019

The California FPPC Uses a Broader Fixed Penalty Policy

The California FPPC, the state entity charged with enforcement of political campaign, lobbying and conflict of interest laws, has been using a Streamlined Penalty Policy since 1999. The program was expanded in 2005, 2015, and again in 2019. According to a December 10, 2018 memo prepared for the FPPC, 77 percent of all cases presented to the Commission in 2017 were resolved through the program.

The FPPC's Streamlined Penalty Policy includes more violations than the San Francisco Ethics Commission's existing Fixed Penalty Policy, which only includes campaign finance violations. Violations included in the FPPC program encompass election campaigns, lobbyists, and conduct of government officials and employees, and appear to be similar in nature to the San Francisco Ethics Commission proposed expanded Fixed Penalty Policy. The FPPC's Streamlined Penalty Policy includes the following violations:

- Statement of Economic Interests (Form 700) Non-Filer
- Statement of Economic Interests Non-Reporter
- Campaign Statement/Report Non-Filer
- Campaign Statement/Report Non-Reporter
- Lobbyist/Lobbying Firm/Lobbyist Employer/Lobbying Coalition/\$5,000-Filer Report Non-Filer
- Cash Contribution or Expenditures
- Campaign Bank Account
- Committee Naming
- Advertising and Mass Mailing Disclosures
- Recordkeeping
- Gift Limit
- Slate Mailer Organization Filing Issues
- Proper Recusal of a Conflict of Interest

- Major Donor Notification

Existing Investigator Training Program Should be Formalized

The Division has ramped up its training efforts for investigators since 2017, but the Division's training program would benefit from being formalized, particularly for new staff. The Division provided three trainings in 2017 when four new investigators were hired, none of which were related to understanding and interpreting the specifics of ethics and campaign finance laws, which comprise the majority of investigations opened by the Division. The lack of specific training in ethics and campaign finance laws for new staff in 2017 could cause beginning investigators to be less equipped to complete investigations in a timely manner. The Enforcement Division provided seven trainings annually on topics relevant to the job requirements of investigators in both 2018 and 2019.

The 17 trainings attended by various Enforcement Division staff between 2017 and 2019 are shown below in Exhibit 21, as well as the number of new investigators hired in each year. The number of trainings provided was lowest in 2017 when four new investigators were hired but increased in 2018 and was maintained at the same level in 2019.

Exhibit 21: Enforcement & Legal Affairs Division Trainings

	2017	2018	2019	Total
Audits			x	1
Civil Service		x		1
Deposition	x	x		2
Ethics Laws		x	x	2
Financial Disclosure			x	1
Implicit Bias		x		1
Investigative Techniques		x	x	2
Legal Research			x	1
Legal Writing	x			1
Settlement Negotiations		x		1
Whistleblower Law			x	1
Whistleblower Program	x	x	x	3
Total	3	7	7	17
New Investigators Hired	4	1	0	5

Source: San Francisco Ethics Commission

We recommend that the Enforcement Division formalize its existing training program for investigators. In particular, the Division should document how

training needs will be identified for new and existing staff, training goals for each employee, and how progress will be assessed.

Conclusion

The length of time to close investigations detracts from the Department's mission to promote public confidence in government and ensure the deterrence effect of enforcement. While the Department is in the process of expanding its Fixed Penalty Policy to streamline case resolution for some cases, it is unclear to what degree this will reduce the timeline for investigations or increase the Division's rate of case closure relative to the number of investigations opened. Because the Division is not able to complete all investigations in a timely manner, establishing a clearly defined process for prioritizing investigations is critical for completing the highest priority investigations in advance of lower priority investigations.

Recommendations

The Executive Director should:

Recommendation 9: Develop a plan to: (a) increase the Division's annual case closure rate relative to the number of investigations opened, and (b) resolve open investigations that are more than two-years old; and report on progress quarterly to the Ethics Commission.

Recommendation 10: Enhance investigation case tracking and performance management by: (a) establishing Division goals for completing investigations and interim milestones, such as completing preliminary review reports; (b) tracking additional dates to capture interim milestones; and (c) monitoring performance in relation to goals.

Recommendation 11: Continue to develop the expanded Fixed Penalty Policy, and present for consideration to the Ethics Commission in order to enable streamlined resolution of an expanded portfolio of investigations. The presentation should include an evaluation of the portion of investigations that would fall under the expanded Fixed Penalty Policy and the estimated reduction in case timelines in order to better understand the projected relative benefit of this change.

Recommendation 12: Report to the Ethics Commission on the results of using the case prioritization criteria within 18 months after implementation in order to assess which types of cases are closed based on which factor(s). This review would help to ensure that the criteria are achieving the desired intent of focusing the Division's workload on the most significant cases and that they are applied in a standardized fashion for all cases.

Recommendation 13: Formalize and document the existing training program for investigators to ensure new and existing staff have sufficient training. The documented training policy should address the following: (a) how training needs will be identified for new and existing staff; (b) the establishment of training goals; (b) a process for tracking progress towards achieving training goals; and, (d) a process for routinely evaluating, updating, and revising the training program.

5. Whistleblower Protection

Ensuring City officials, employees, and contractors are protected from retaliation is critical to the effectiveness of the City's whistleblower program. The Ethics Commission's Enforcement Division is responsible for investigating complaints that an individual faced retaliation due to whistleblower actions. Investigation of whistleblower retaliation complaints relies on witness testimony and other evidence to determine that a protected activity occurred, the complainant suffered an adverse employment action, and the adverse employment action was caused by the protected activity. However, because whistleblower retaliation investigations closed since 2017 took more than 2.7 years to resolve on average, witness testimony may not be accurate due to the length of time since the original incident, making it difficult to establish the validity of the retaliation complaint. Also, Enforcement Division investigators receive less training in investigating whistleblower retaliation which pertains mostly to employment law rather than ethics law, than investigators in the Equal Employment Opportunity division of the City's Department of Human Resources. Increased investigator training could improve the timeliness and effectiveness of whistleblower retaliation investigations.

Whistleblower Retaliation Investigations are Not Completed Timely

Ensuring City officials, employees, and contractors are protected from retaliation is critical to the effectiveness of the City's whistleblower program and the ethics program. The City's Whistleblower Protection Ordinance (the Ordinance) prohibits a City officer or employee from terminating, demoting, suspending, or taking other similar adverse employment action against an individual because that person has filed a report alleging improper governmental activity (such as misuse of City funds or violations of conflicts of interest laws) of a city officer or employee. An individual may file a complaint alleging improper government activity with the Office of the Controller's Whistleblower Program, the Ethics Commission, the District Attorney, the City Attorney, or the complainant's department. However, the Ethics Commission is responsible for investigating reports alleging that retaliation occurred as a result of reporting improper governmental activity to one of these entities.

Recent Efforts to Clarify and Strengthen Whistleblower Protection

Following a 2014-2015 San Francisco Civil Grand Jury Report that identified shortfalls of the Ordinance, the Ethics Commission proposed revisions to the Ordinance in April 2016 to clarify and strengthen protections for whistleblowers; the Commission also adopted clarifying regulations in 2016. The proposed amendments took effect on January 21, 2019 after a more than two-year process to: (a) obtain feedback on proposed revisions from the Controller's Office, the Department of Human Resources, and interested bargaining units; (b) update proposed amendments in light of feedback received; and (c) get the proposed amendments through the legislative process, including approval by the Ethics Commission and Board of Supervisors.

The amendments expanded the class of individuals who receive protection under the Ordinance and provided additional safeguards to protect the identity of complainants to reduce the opportunities for retaliation. Specifically, the amendments:

- Expanded protections to officers and employees of City contractors, previously not covered by the Ordinance.
- Removed the requirement that the original complaint alleging improper governmental activity be made in writing, if made to the complainant's own department. Under the revised ordinance, oral complaints to one's own department are now considered protected under the law, consistent with the protections afforded to oral complaints to the Office of the Controller's Whistleblower Program, the Ethics Commission, the District Attorney, or the City Attorney.
- Added responsibilities for supervisors who receive complaints of retaliation. Supervisors now must keep the complaint confidential and assist the complainant in reporting retaliation by referring the complainant to the Ethics Commission and documenting the referral in writing. The Ordinance also now requires that supervisors receive training regarding these obligations.
- Established penalties to City officers and employees who release the identity of an individual who files a whistleblower complaint or a whistleblower retaliation complaint.

Ethics Commission Investigations of Whistleblower Retaliation Complaints

Investigators within the Enforcement & Legal Affairs Division receive whistleblower retaliation complaints, along with all other complaints. Credible complaints that fall within the jurisdiction of the Ethics Commission undergo preliminary review by investigators in order to determine whether a full investigation is warranted.

Whistleblower Retaliation Investigations Follow an Established Investigative Process

Of the 34 whistleblower retaliation complaints received by the Department over the three-year period from 2017 through 2019, 20 were closed without substantiation of the complaint. Of the remaining 14, two were withdrawn and eight are still pending.

The Division appears to follow the investigative process described in a Commission memo dated Nov. 8, 2019 when reviewing these complaints and determining whether they warrant an opened investigation, as described below. To substantiate a retaliation complaint, investigators must:

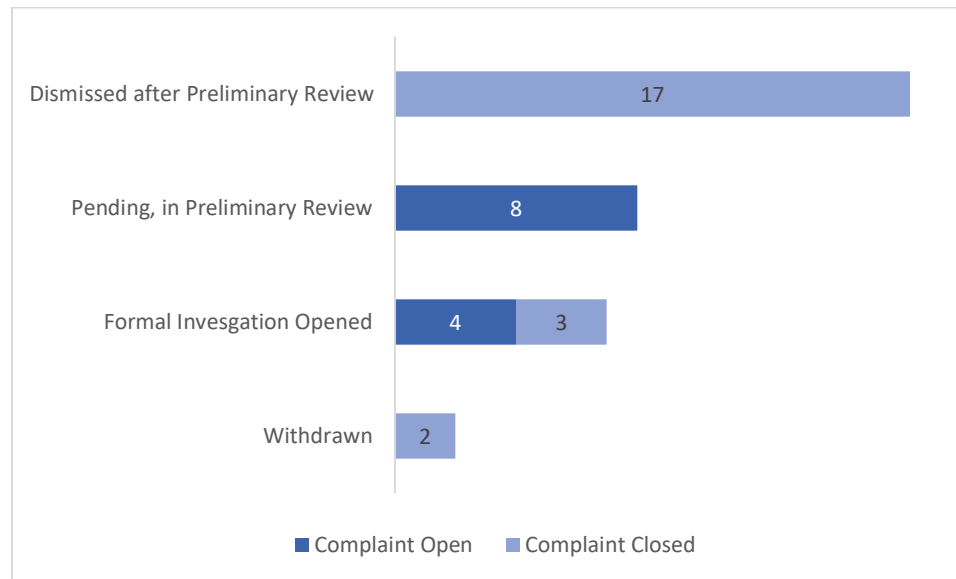
- 1) **Establish that a protected activity occurred:** The investigator determines whether there is reason to believe that an individual engaged in conduct designated by local law as “protected activity.” Protected activity under the Whistleblower Protection Ordinance is when an employee files or attempts to file a particular type of complaint or participates in or cooperates with a particular type of investigation, pursuant to San Francisco Government and Conduct Code § 4.115, subdivision (a)(1)-(3).¹⁷
- 2) **Establish that an adverse employment action occurred:** The investigator determines whether there is reason to believe that an employer took an “adverse employment action” against the individual, such as firing or disciplining the individual.
- 3) **Establish a causal link between the protected activity and adverse employment action:** The investigator determines whether there was a causal connection between the protected activity and the adverse employment

¹⁷ Pursuant to the San Francisco Government and Conduct Code § 4.105(a), protected activity involves complaints alleging that “a City officer or employee has engaged in improper government activity, misused City funds, caused deficiencies in the quality and delivery of government services or engaged in wasteful and inefficient government practices, or that a City contractor or employee of a City contractor has engaged in unlawful activity in connection with a City contract.”

action. That is, the individual’s having engaged in the protected activity meaningfully caused the employer to take the adverse employment action.

Of the 34 complaints we reviewed, 65 percent (22 complaints) were dismissed, closed, or withdrawn, and 35 percent (12 complaints) were in preliminary review or open investigation as of June 2020, as shown in Exhibit 22. All complaints that were still in preliminary review were received in 2019 as shown in Exhibit 23. Of the complaints filed in 2017 and 2018, approximately two-thirds were dismissed after preliminary review, 29 percent resulted in a formal investigation being opened, and six percent were withdrawn before completion of preliminary review. Exhibit 22 shows complaint outcomes over the three-year period, and Exhibit 23 breaks down complaint outcomes by year received.

Exhibit 22: Outcomes for 34 Whistleblower Retaliation Complaints, 2017-2019



Source: San Francisco Ethics Commission

Exhibit 23: Outcomes for Retaliation Complaints by Year Received, 2017-2019

	2017	2018	2019	Total
Dismissed after Preliminary Review	8	3	6	17
Formal Investigation Opened	3	2	2	7
Investigation Closed	2	1	0	3
Investigation Open*	1	1	2	4
Pending, in Preliminary Review*	0	0	8	8
Withdrawn	1	0	1	2
Total	12	5	17	34
% Dismissed after Preliminary Review	66.7%	60.0%	35.3%	50.0%
% Resulting in a Formal Investigation	25.0%	40.0%	11.8%	20.6%
% Withdrawn	8.3%	0.0%	5.9%	5.9%
% Pending	0.0%	0.0%	47.1%	23.5%

Source: San Francisco Ethics Commission

We requested that the Division summarize their investigative findings for each of the 20 complaints that were dismissed or closed in order to verify that the three-step investigative process described in the November 2019 memo was followed. The summary results displayed in Exhibit 24 show that in each of the 20 dismissed or closed cases, the Division found the evidence was insufficient to sustain a whistleblower retaliation complaint, as noted above. Our analysis was limited in that we were unable to review primary documents related to specific investigations (due to confidentiality) and relied on summary information produced by the Enforcement Division.

Exhibit 24: Summary Findings for Whistleblower Retaliation Dismissed or Closed Investigations, 2017-2019

Reason for Closure or Dismissal	Closed	Dismissed	Total
1. No Protected Activity Occurred		8	8
2. No Adverse Action Occurred		2	2
3. Could not Establish Causality	2	6	8
Other Reason*	1	1	2
Total	3	17	20

Source: San Francisco Ethics Commission

*One complaint was dismissed because it was outside of the Department's jurisdiction and one investigation was closed because the complainant withdrew the complaint

Investigators could not establish that both a protected activity and an adverse employment action occurred in 10 complaints, resulting in their dismissal. Eight complaints were dismissed during preliminary review or closed after opening an

investigation because investigators could not establish causality between the complainant's engagement in a protected activity and an adverse employment action. In most of these cases (7 out of 8), investigators identified evidence of a valid business reason for the adverse employment action (such as poor performance), and in the remaining case investigators determined that the protected activity occurred *after* the adverse employment action. The remaining two complaints were dismissed or closed for other reasons.¹⁸ Because most complaints filed in 2019 were unresolved as of June 2020, we could not compare outcomes for complaints filed before and after amendments to the Whistleblower Protection Ordinance.

Whistleblower Retaliation Investigations Take More than 2.5 Years to Resolve

Whistleblower retaliation investigations take more time to investigate than most other types of cases. As discussed in Section 4, our analysis of 82 closed investigations that were opened between 2017 and 2019 or unresolved in prior years, shows that the six whistleblower retaliation investigations took 32 months (2.7 years) on average to resolve compared to 29 months for all types combined. Only lobbyist cases, which took 36 months on average to resolve, took longer than retaliation cases. Timely resolution of whistleblower retaliation investigations is important for promoting participation in the City's whistleblower protection program and ethics program, as individuals who fear retaliation may not report improper activity.

The 32-month average timeline includes 7 months on average to complete preliminary review and open an investigation and an additional 25 months to close the investigation after it is opened. Complaints that were dismissed after preliminary review similarly took approximately 7 months to complete preliminary review.

Testimonial evidence is especially important in retaliation investigations (compared to other case types) because investigators attempt to establish through witness interviews the credibility of both the complainant and respondent and must develop an accurate understanding of dynamics in the workplace that may have a bearing on the allegations under investigation. In addition, witness testimony that establishes that a respondent knew about the whistleblower complaint may help establish a causal link between the complaint

¹⁸ One complaint was outside the Department's jurisdiction and the other complaint was closed because the complainant withdrew the complaint after the investigation was opened.

and the adverse employment action. Long investigation timelines can impair case outcomes, as evidence (including testimonial evidence from witnesses) may be more difficult to collect for older cases.

We recommend that the Department establish goals for completing whistleblower retaliation investigations and specify how whistleblower retaliation cases should be prioritized among other cases to ensure timely resolution. The Equal Employment Opportunity Division of the Department of Human Resources has an established goal of resolving 70 percent of retaliation complaints within six months. We also recommend that the Department report on whistleblower retaliation case outcomes to the Ethics Commission on an annual basis, including reasons for dismissals and case closures, to enhance transparency of these investigations. Although the Controller's Office produces quarterly and annual reports on the City's Whistleblower Program, including retaliation complaints investigated by the Ethics Commission, there is little detail in these reports on reasons for dismissal and case closure.

Whistleblower Retaliation Investigations Require Specialized Training

Whistleblower retaliation investigations require specialized training because they are different from other types of ethics investigations. Other ethics investigations require an understanding of the City's campaign finance and ethics laws and often require review of disclosures filed with the Department, as well as independent records to verify those disclosures. In contrast, whistleblower retaliation investigations require an understanding of the City's employment laws and practices and disciplinary procedures. They also require that investigators establish that the intent of the respondent was to penalize the complainant for filing a whistleblower complaint and establish credibility of both parties. Investigators do not have to establish intent in most other ethics investigations, except for bribery cases. Insufficient training in the City's employment practices and interview techniques can impair the efficiency and effectiveness of investigators.

DHR's Equal Employment Opportunity Division provides extensive training to its investigators. The training period for DHR entry-level investigators lasts throughout the one-year probationary period, and entry-level investigators are paired with a mentor during their one-year probationary period to shadow senior investigators and receive regular feedback on interview techniques and other elements of retaliation investigations. While the Ethics Commission does not have

the resources to provide this level of training to its investigators, the Department should have a specialized training program for retaliation complaints.

In 2018 and 2019, the Enforcement Division has provided trainings specific to whistleblower protection law and investigations and civil service rules, but the Division's approach to training for these investigations would benefit from being formalized. We recommend that the Division's documented training program (recommended in Section 4) specifically address training needs for whistleblower retaliation investigations. In order to maximize resources, the Division could consider recording trainings so they are memorialized for future use and retaining subject matter experts from other city departments, such as DHR or the City Attorney's Office.

Conclusion

Ensuring City officials, employees, and contractors feel protected from retaliation is critical to the effectiveness of the City's whistleblower program. However, because retaliation investigations are not completed in a timely manner the validity of the retaliation complaint may be difficult to establish if witness testimony or other evidence is not fresh. Also, relevant training for Department staff who investigate whistleblower retaliation complaints is essential due to the need to understand the City's employment laws and regulations, and to be able to establish intent, required by these investigations.

Recommendations

The Executive Director should:

Recommendation 14: Report on whistleblower retaliation case outcomes to the Ethics Commission on an annual basis to enhance transparency of these investigations.

Recommendation 15: Establish goals for completing whistleblower retaliation investigations and specify how whistleblower retaliation cases should be prioritized among other cases to ensure timely resolution (in coordination with recommendation 4.2)

Recommendation 16: Document specialized training for whistleblower retaliation investigations and build in mechanisms to verify that trainings occur and that they are useful and effective as needs change over time.

Conclusion, Costs, and Benefits

The Ethics Commission (Department) administers campaign finance, lobbying, and ethics programs, advises city departments on ethical matters, conducts policy analysis, and performs audits, investigations, and administrative enforcement, at an annual operating budgeted cost of \$4.6 million. However, persistent vacancies have impacted the Department's work and resulted in large annual savings in salaries and benefits costs.

The Department has made progress in recent years to improve processes and reduce the time it takes to complete audits of election campaign committees. In addition, the Department has taken steps to improve prioritization of investigations of alleged violations of ethics laws and expand streamlined processing of certain cases to include more types of violations. However, additional efforts are needed to further reduce audit and investigation timelines. The Department takes more than two years on average to complete investigations and opens more cases than it can close in a year.

Our recommendations are intended to improve accountability in government through timely completion of audits and investigations. While many of our recommendations can be implemented using existing resources (as budgeted in FY 2019-20), the Department will need additional hiring and recruitment resources to fill its vacancies. Salary savings could be reallocated in the Department's budget as a one-time source to fund these recruitment and hiring efforts.

Written Response from the Department



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

NOREEN AMBROSE
CHAIR

July 31, 2020

YVONNE LEE
VICE-CHAIR

Ms. Severin Campbell
Director
Budget and Legislative Analyst's Office
San Francisco Board of Supervisors

DAINA CHIU
COMMISSIONER

FERN M. SMITH
COMMISSIONER

Re: Departmental Response to BLA Performance Audit Report Recommendations

LARRY BUSH
COMMISSIONER

Dear Ms. Campbell,

LEEANN PELHAM
EXECUTIVE DIRECTOR

The Ethics Commission appreciates the opportunity to respond to the recommendations contained in the Budget and Legislative Analyst's Office Audit Report on the Commission's operations and functions.

Since the January 28 adoption of the Board of Supervisors motion to require a performance audit of the Ethics Commission as a priority for Fiscal Year 2020, the stunning public health developments and public governance issues that have emerged in City government have only underscored the paramount need to ensure the health and integrity of all City institutions. Under these extraordinary circumstances, it is more vital than ever to ensure that San Franciscans can be confident in the capacity of their government to deliver services fairly, equitably, with utmost skill, and effectively. Accountability to effective government can be meeting the City's deep emergency needs through re-deployment of city employees from their home departments to temporary roles as emergency operations workers -- such as the 1,700+ hours that have been committed by Ethics Commission Staff since late March and are continuing to directly support of the City's COVID-19 emergency response. It can also mean ensuring the continuity of business in the face of unprecedented operational challenges through creativity, flexibility, and patience -- all traits the BLA audit team demonstrated in abundance while both our offices transitioned to fully remote operations once shelter in place orders were issued in March.

There is no doubt that accountability to effective government also means a commitment to continuous improvement and to doing the hard work needed to demonstrate real progress. The Ethics Commission committed to that work anew in 2016, and the vision it detailed in its blueprint of strategic priorities at that time continues to actively guide its work in 2020. Consistent with that vision, the Commission agrees with each of the recommendations contained in the BLA Audit and believes that their implementation will help advance the Commission's work to the next level of effectiveness, accomplishment, and public trust.

Substantively, a number of recommendations focus on steps to deepen the impact of the Commission's oversight mandates by further improving the processes and practices of the Commission's audit and enforcement programs. Additional recommendations address ethics training for City employees and officials and, more generally, ways for the Commission to improve performance monitoring and performance reporting organization-wide. A number of recommendations build on existing foundations that the Commission has developed but has not yet been able to fully implement. We look forward to further advancing the impact of our work informed by the additional insights the BLA Audit provides.

We strongly agree with Recommendation 4 as essential for enabling the Commission to implement the BLA Audit recommendations within the report's proposed 18-month window. Recommendation 4 calls on the Board of Supervisors to fully resource the Ethics Commission at its FY20 funding and authorized staffing levels. Ensuring that the Commission's FY21 and FY22 budgets contain sufficient funding and full human resource and recruitment services necessary to timely engage in multiple recruitments at once is critical.

Notably, existing attrition targets that function as structural salary account shortfalls require the Ethics Commission in practice to keep some authorized positions permanently vacant. The hiring plan identified in the BLA Audit would instead mean FY21 and FY22 Commission budgets are sufficient to fully fund all authorized positions and allow for all position vacancies to be filled as well. Ensuring a fully resourced Ethics Commission will require securing approval by the Mayor's Budget Office to fund and expedite approval requests to fill the Commission's vacant positions, while also allocating sufficient resources for the Department of Human Resources to support expedited and contemporaneous recruitment and hiring processes for multiple positions. To fulfill the recommendations identified in the Audit, current Commission vacancies would need to be resolved with funding and support that enables full and expeditious hiring of Ethics Commission staff no later than June 30, 2021. In particular, the hiring of the vacant Audit Program Manager (1824) position and the vacant Investigator (1822) position will be critical to the Commission's ability to implement the audit- and enforcement-related recommendations.

How the Audit's 15 recommendations for departmental action can be sequenced and ultimately achieved will be shaped in part by the availability of resources to initiate and sustain an expeditious hiring process necessary to fully resource and fully staff the Commission, including the backfill of any position vacancies that may result from any successful internal Staff hires. It will also be dependent on when the Commission is once again able to fully engage any existing staff deployed for DSW service in fully resuming their Commission duties.

Separately, with regard to ethics training recommendation, the Commission's February 2020 budget submission included a plan to provide training on ethics laws to City employees and officials. Proposed as a three year limited term project with a total projected cost of \$835,000, the Commission's *Ethics@Work* initiative proposed a team of training staff dedicated specifically for the purpose of heightening awareness of ethics laws among leaders at all levels of City government and supporting their ability to effectively navigate ethical issues that arise in their City service. The preliminary plan addressed the assessment of training needs, training goals, and the need to track progress and evaluate the program's effectiveness. The Commission does not have existing staffing resources that can be dedicated to training or the ability to absorb that work within existing funding levels, and no funding has been included for this purpose in the Mayor's proposed FY21-22 budget. Further development and

implementation of ethics education and outreach will likely remain on hold pending the identification of sufficient funding for those purposes.

In its February budget submission, the Commission proposed exploring a new funding model to provide sufficient and sustainable resources for programs such as ethics outreach and *Ethics@Work*. It noted that the creation of a *Citywide Integrity Fund* could provide a more stable base of funding for purposes such as these. Funding streams, for example, could be derived through a shared contribution among City departments. In recognition that the City's vision and mandate to deliver work of high integrity is a shared one, the Commission continues to believe the creation of Citywide Integrity Fund is an approach that warrants serious consideration and development to enable the Commission access to funding necessary to keep pace with and sustain the capacity it needs to achieve its broad citywide mandate.

Particularly in this profoundly challenging time, when San Franciscans are looking to local government to commit its all in service to the public, the commitment to ensuring we are doing all we can to guarantee integrity for the public we serve is essential. That commitment is particularly vital in the present moment.

The Ethics Commission remains committed to doing its part, and we appreciate the work and recommendations the BLA has provided and look forward to the continued support of the Board of Supervisors.

Sincerely,

LeeAnn Pelham

LeeAnn Pelham
Executive Director

Summary Highlights of Key Accomplishments 2016-2020

As requested by the Budget and Legislative Analyst's Office in connection with its performance audit of the Ethics Commission for the period 2016-2020, the Commission has provided the following summary list highlighting key departmental accomplishments during that period. These accomplishments continue to build on and be guided by strategic priorities the Commission first established in its 2016 [Blueprint for Accountability](#) to promote 1) strong laws, well implemented, with more timely and effective oversight, 2) broadened understanding and awareness of the laws, and 3) public service excellence through its own organizational effectiveness, transparency and accountability.

- Created a dedicated Policy and Legislative Unit to strengthen Ethics Commission's capacity to promote practical and effective public policies and better engage the public.
- Enacted and implemented [advice and opinion regulations](#) to create processes and timelines for intaking and handling requests for advice and opinions.

Enacted and implemented [new consolidated investigation and enforcement regulations](#) that ensure procedures governing the Commission's administrative enforcement functions are more clear, fair, standardized, and more transparent.

- Implemented and operationalized the Anti-Corruption and Accountability Ordinance (ACAO), which added seven new local disclosure requirements and amended two pre-existing requirements. The new requirements impact City officials, candidates for City elective office, committees, City departments who initiate qualifying City contracts and grants, and donors and recipients of certain behested payments.
- Implemented and operationalized voter-approved Prop F following its adoption by San Francisco voters in November 2019, which added a new land-use prohibition and appended to existing disclaimer and independent expenditure disclosure laws.
- Created electronic filing to enable online access to campaign advertisements and related disclosures.
- Developed and implemented Proposition T, a measure placed on the ballot by the Ethics Commission in 2016 which created new rules on lobbyist gifts, contributions, and bundling, and enhanced the filing system to update disclosure framework to enable enforcement of Measure T's lobbyist contribution ban.
- Enacted regulations in 2016 to implement Proposition C, a measure placed on the ballot by the Ethics Commission to create rules on expenditure lobbyists and implemented new filing requirements to enable electronic filing of expenditure lobbyists.

- Developed and implemented a “no-file, no-vote” ordinance to prevent Board and Commission members from voting on matters if they have failed to file their required Statement of Economic Interests or complete required training in ethics and open government laws.
- Automated business processes to improve compliance with contractor contribution restrictions by improving effectiveness of contract approval disclosure reporting requirements among City departments, Board of Supervisors, and the Mayor’s Office.
- Implemented the first ordinance creating local behested payment reporting in San Francisco.
- Implemented public disclosure reporting requirements for [Contributors & Third Parties Reporting for elections to the Retirement Board, Health Service System Board, Retiree Health Care Trust Fund Board.](#)
- Enacted regulations to harmonize the process and deadlines for City officials to file their annual Statement of Economic Interests (Form 700) and completing their annual ethics and sunshine training and integrated annual Sunshine Ordinance and ethics training with the Form 700 electronic filing system.
- Enacted regulations to extend electronic filing of Statement of Economic Interests (Form 700) to designated employees (“code filers”) on March 18, 2020 following meet-and-confer session with employee bargaining units.
- Reviewed 170 public financing submissions to determine candidate eligibility for public funds and qualified 41 candidates to receive over \$7.38 million in public financing for their election campaigns.
- Reviewed over \$9 million in third-party expenditures reported in the 90 day period before each election to determine impact of independent spending on expenditure ceilings of publicly financed candidates.
- Performed a comprehensive policy and legislative review of the City’s public campaign financing program, resulting in the enactment of two ordinances and two sets of regulations to strengthen the impact of public financing in City elections. Implemented new provisions with improved administrative processes and enhanced compliance materials beginning with the November 2019 election.
- Conducted two or more public stakeholder meetings for each legislative project undertaken to provide improved opportunities to increase engagement with the public in the development or revision of City’s political reform laws.
- Launched a new web site at [sfethics.org](#) to improve online content, enable mobile device accessibility, and provide tools to promote integrity in San Francisco government.
- Issued [four public post-election reports on the use of public funds](#) in the 2015, 2016, 2018, 2019 elections to the Mayor and Board of Supervisors as required by SFC&GCC Section 1.156.

- Issued [49 public audit reports of campaign committees](#) with expenditures totaling \$34.7 million over three election cycles to determine their compliance with local and state campaign finance and disclosure laws.
- [Resolved 40 enforcement cases by formal action of the five-member Ethics Commission](#), including approval of 32 proposed stipulated settlements in which respondents acknowledged responsibility for violating the law and agreed to pay over \$109,000 in fines. Among the respondents were six incumbent or former elected officials.
- Actively managed an enforcement caseload comprised of an increasing volume of formal investigations relative to the number of matters in preliminary review while simultaneously evaluating and initiating enforcement procedures and practices to improve program effectiveness.
- Expanded the Whistleblower Protection Ordinance to broaden what qualifies as whistleblowing, to extend protections to City contractors and their employees, and to create new responsibilities for supervisors.
- Collaborated with the Controller's Office and Department of Human Resources to develop new training and promotional materials for departmental supervisors to heighten awareness of strengthened Whistleblower protections.
- Developed and implemented factors to apply in exercising prosecutorial discretion to enable improved alignment of limited enforcement resources with most pressing priority matters.
- Provided filing support and online public access to over 3,072 Statements of Economic Interests (Form 700) filed by more than 500 Department Heads, Board and Commission members, and elected officials that disclosed more than 16,904 reportable interests.
- Provided filing support to approximately 3,450 designated filers each year who were required to file Statements of Economic Interests (Form 700) on paper with their departments.
- Conducted trainings each Annual Form 700 filing period for designated filing officers and liaisons who facilitate and collect Statements of Economic Interests from designated filers to support strong filing compliance in their respective departments, including informational sessions conducted in collaboration with the Office of the City Attorney.
- Provided in-person ethics training in collaboration with City Attorney's Office in partnership with the Municipal Executives Association to MEA members in 2019 and 2020.
- Provided filing support and compliance guidance to more than 370 candidates who have sought election to San Francisco City or County office since 2016, and to more than 630 ballot measure or general purpose committees active in San Francisco elections during that same period.
- Conducted 18 candidate and treasurer trainings for the 2016, 2018, 2019, and 2020 elections and transitioned training to an online format.

- Provided filing support, compliance guidance, and training to more than 200 contact and expenditure lobbyists required to file lobbying registration and disclosure statements with the Commission in connection with their activities attempting to influence City decisions.
- Provided filing support and compliance guidance to more than 50 major donors who made qualifying contributions to support local candidates and committees, and to more than 190 registered Campaign Consultants who provided campaign management services to candidates and/or committees since 2016.
- Provided filing support to more than 105 persons required to register and file quarterly reports for permit consulting services of major real estate development projects with an actual or estimated construction cost exceeding \$1,000,000, or minor projects that require a permit issued by the Entertainment Commission, and to 35 major developers required to file initial and quarterly reports for certain real estate projects with an estimated construction cost of more than \$1,000,000.
- Developed and initiated an E-filing Conversion Project that has established a comprehensive electronic framework for all Ethics Commission disclosure programs to reduce paper processing, promote compliance, and provide the public with practical tools to better view, download, and search disclosed data across all program areas.
- Developed electronic filing to automate 25 disclosure and administrative processes to improve user experience, improve processing efficiency, and strengthen public access to disclosure filings as open data.
- Development of online campaign finance dashboards to summarize contribution and expenditure activity in San Francisco elections and enable powerful research capabilities.
- Provided access to electronically filed Form 700 Statement of Economic Interests records of top San Francisco officials as open data on DataSF.
- Secured support from Controller's Office and Department of Human Resources to conduct oversight reviews and initiate best practices to deepen organizational accountability for operations and functions.
- Established and actively managed consistent personnel management and administrative policies and practices, including standardization of position descriptions to ensure recruitments objectively and fully reflect the broad nature of work required and the knowledge, skills, and abilities necessary to succeed in the job.
- Established and implemented an annual employee goal setting and performance review process to ensure individual work contributions are aligned with organizational priorities, uphold accountable public service, and support staff development, retention, and successful job performance.
- Committed more than 1,700 Ethics Commission staff hours as of July 31, 2020 to directly support the City's COVID-19 emergency response through Disaster Service Worker (DSW) deployments by 40 percent of the Commission's current staff.

Budget and Legislative Analyst's Recommendations

No.	Audit Recommendation	Priority Level
Assessing Effectiveness and Risk of Ethics Programs		
<u>The Executive Director should:</u>		
1	Produce an annual report that communicates the Department's goals, activities, and outcomes to employees and members of the public. The annual report should include specific performance measures for each function, with a focus on measures that capture outcomes, and establish goals for those measures.	2
2	Formalize and document procedures to provide training on ethics laws to City employees and officials. The procedures should specify: (a) how training needs will be assessed; (b) training goals; (c) a process for tracking progress towards achieving training goals; and, (d) a process for routinely evaluating, updating, and revising training procedures.	1
3	Direct the Audit Division to produce a summary of audit findings after each audit cycle and submit to the Director of the Engagement and Compliance Division to inform compliance efforts.	2
Staffing		
<u>The Board of Supervisors should:</u>		
4	Ensure adequate staffing in the Ethics Commission, including requesting the Mayor's Budget Office to (i) expedite approval of requests to fill vacant positions, and (ii) allocate the Department's salary savings to the work order with the Department of Human Resources to increase recruitment and hiring.	1
Audits		
<u>The Executive Director should:</u>		
5	Establish overall goals for completing audits as well as goals for review of audit reports by the Executive Director, and report on results in relation to goals after completion of each audit cycle to the Ethics Commission.	2
6	Approve procedures for a lobbyist audit program and conduct an initial lobbyist audit by the end of FY 2020-21.	2
7	Develop an updated audit manual or standard operating procedure that provides auditors with a step-by-step guide to conduct audits.	3
8	Establish a formal training program for the Audit Division, which includes: (a) identification of training needs based on discussions with the acting audit supervisor and auditors; (b) training goals for each employee; (c) A process for tracking progress towards achieving training goals; and, (d) a process for routinely evaluating, updating, and revising the training program.	2

Priority 1 recommendations should be completed by December 31, 2020

Priority 2 recommendations should be completed by June 30, 2021

Priority 3 recommendations should be completed by December 31, 2021

Budget and Legislative Analyst's Recommendations

No.	Audit Recommendation	Priority Level
Investigations		
<u>The Executive Director should:</u>		
9	Develop a plan to: (a) increase the Division's annual case closure rate relative to the number of investigations opened, and (b) resolve open investigations that are more than two-years old; and report on progress quarterly to the Ethics Commission.	1
10	Enhance investigation case tracking and performance management by: (a) establishing Division goals for completing investigations and interim milestones, such as completing preliminary review reports; (b) tracking additional dates to capture interim milestones; and (c) monitoring performance in relation to goals.	2
11	Continue to develop the expanded Fixed Penalty Policy, and present for consideration to the Ethics Commission by January 2021 in order to enable streamlined resolution of an expanded portfolio of investigations. The presentation should include an evaluation of the portion of investigations that would fall under the expanded Fixed Penalty Policy and the estimated reduction in case timelines in order to better understand the projected relative benefit of this change.	1
12	Report to the Ethics Commission on the results of using the case prioritization criteria within 18 months after implementation in order to assess which types of cases are closed based on which factor(s). This review would help to ensure that the criteria are achieving the desired intent of focusing the Division's workload on the most significant cases and that they are applied in a standardized fashion for all cases.	2
13	Formalize and document the existing training program for investigators to ensure new and existing staff have sufficient training. The documented training policy should address the following: (a) how training needs will be identified for new and existing staff; (b) the establishment of training goals; (b) a process for tracking progress towards achieving training goals; and, (d) a process for routinely evaluating, updating, and revising the training program.	2
Whistleblower Protection		
14	Report on whistleblower retaliation case outcomes to the Ethics Commission on an annual basis to enhance transparency of these investigations.	2
15	Establish goals for completing whistleblower retaliation investigations and specify how whistleblower retaliation cases should be prioritized among other cases to ensure timely resolution (in coordination with recommendation 4.2)	1
16	Document specialized training for whistleblower retaliation investigations and build in mechanisms to verify that trainings occur and that they are useful and effective as needs change over time.	2

Priority 1 recommendations should be completed by December 31, 2020

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