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MEMORANDUM

TO: David Chiu, City Attorney
THROUGH: Jesse Smith, Chief Assistant City Attorney
Yvonne Meré, Chief Deputy City Attorney
FROM: Keslie Stewart, Head Attorney for Public Integrity
Carol Stuart, Senior Investigator
DATE: January 18, 2022
RE: Public Integrity Investigation at the Department of Building Inspection (DBI):
No Finding of Favoritism or Selective Enforcement by Now Interim Director
O’Riordan at Identified Projects from 2009-2012, Despite Preferential Treatment
by DBI Leadership above Him and Unethical Tone from the Top

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I. EXECUTIVE SUMMARY

In response to various public requests for an investigation by the City Attorney’s Office (as described in Section II below), the Public Integrity and Investigations Team of this Office undertook a focused investigation into the allegations made in 2021 that Department of Building Inspection (“DBI”) Interim Director Patrick O’Riordan favored politically connected developers a decade ago, from 2009-2012, by not fully enforcing the Building Code at three construction projects (collectively, the “Projects”):

- 3418 26th Street (2012) (the “26th Street Project”),
- 2207 25th Street (2011) (the “25th Street Project”), and
- 700 Valencia Street (2009) (the “Valencia Street Project”).

At that time, O’Riordan was a Senior Inspector at DBI. Norman Gutierrez, a former DBI Inspector, and Christopher Schroeder, a current DBI Inspector, made the allegations. Specifically, they claimed that O’Riordan, their direct supervisor at the time of the Projects, inappropriately took over the inspections and stopped them from enforcing the Building Code because the Projects were associated with influential and politically connected builders. They suggest that O’Riordan used “kid gloves” on these Projects to unfairly favor the project sponsors.

As described in more detail in Section III, in our investigation we found no credible evidence that O’Riordan participated in selective enforcement or preferential treatment in connection with the Projects. We reviewed the permit histories for the Projects, and interviewed many participants, including other building inspectors at DBI, as well as O’Riordan and Schroeder (Gutierrez declined to be interviewed by our investigators). All evidence that we found – excluding the allegations of Gutierrez and Schroeder – demonstrates that O’Riordan’s conduct related to the Projects was appropriate and consistent with DBI enforcement standards and its Code of Conduct.

We also concluded that Gutierrez’s and Schroeder’s allegations were not credible in light of the permit history for the Projects and other evidence that we gathered through our investigation. Both sources refused to speak voluntarily with this Office about their allegations to the media. We found that both Gutierrez and Schroeder have a basis for bias and animus against O’Riordan, because he previously disciplined each of them – Gutierrez in 2013 and Schroeder less than a year ago in April 2021. Further, Schroeder gave evidence in 2014 as part of the Office’s investigation into a Mel Murphy project at 125 Crown Terrace (discussed below in this Executive Summary), and at that time Schroeder told our Office that he was not familiar with the 26th Street Project. That prior evidence directly contradicts his current allegations, made more than seven years later and after O’Riordan disciplined him in April 2021. All these considerations undercut Gutierrez’s and Schroeder’s credibility and the validity of their allegations against O’Riordan.

Besides not finding O’Riordan engaged in wrongdoing at the Projects, nor did we find other evidence that O’Riordan selectively enforced the Building Code or provided preferential

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treatment at other DBI projects that we have reviewed either as part of our joint public integrity investigation with the Controller or in past code enforcement projects that our Office has handled. The only allegations of any preferential treatment or impropriety against O’Riordan that we identified come from Gutierrez and Schroeder, whom our investigation found not credible.

But, while we find no legitimate basis to implicate O’Riordan in wrongdoing at the three Projects or other projects we reviewed, there is ample evidence demonstrating a culture at DBI at that time of favoritism and selective enforcement for politically connected individuals, and outright corruption by some DBI employees. That culture reveals a failure of leadership, including by former DBI Director Tom Hui, to prioritize or model ethical conduct and to implement reforms that would limit the ability to provide preferential treatment and provide greater transparency and accountability at DBI.

Significantly, one of the Projects at issue in the 2021 allegations against O’Riordan – the 26th Street Project – involved a five-story building that was developed without necessary permits by Mel Murphy. While investigating the allegations relating to that 26th Street Project, we reviewed records from investigations this Office conducted in 2014 concerning another Mel Murphy property – 125 Crown Terrace (“125 Crown Terrace”). On December 16, 2013, the house at 125 Crown Terrace slid off its shorings and down the hill; the house was stopped by an excavator parked at the bottom of the hill. Both 125 Crown Terrace and the 26th Street Project were included in a larger code enforcement lawsuit that this Office filed in 2015 against Mel Murphy.

We also reviewed a previously confidential report that the City’s General Services Agency (“GSA”) prepared in 2014 under the supervision of then City Administrator Naomi Kelly, uncovering preferential treatment by DBI for Mel Murphy at 125 Crown Terrace (the “GSA Report”). A copy of the full GSA Report is attached as Exhibit 1 (with limited redactions where warranted to protect privacy rights). At that time, neither DBI nor GSA publicly disclosed the full GSA Report. Rather, GSA publicly released a summary report of its findings and recommendations (the “GSA Summary”). A copy of the GSA Summary is attached as Exhibit 2. After the GSA issued its public summary, DBI also released a public report regarding the cause of the accident at 125 Crown Terrace and the plans to fix the structure (the “DBI Report”), a copy of which is attached as Exhibit 3. Neither the public GSA Summary nor public DBI Report fully disclosed the errors and preferential treatment that were uncovered during GSA’s investigation and included in the GSA Report that went to DBI Director Tom Hui.

Our focused investigation into the 2021 allegations against O’Riordan is one piece of a larger public corruption investigation involving DBI that we initiated in partnership with the San Francisco Controller’s Office immediately after federal criminal charges filed in January 2020 against former Director of Public Works Mohammed Nuru. Among other things, those charges implicated former DBI Director Hui in alleged favoritism of former permit expeditor Walter Wong at 555 Fulton Street. As part of that larger joint investigation, on September 16, 2021, the

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Controller issued a preliminary report including findings and recommendations for reform related to preferential treatment and corruption in the original plan review of 555 Fulton Street (the “Controller’s Report”). The Controller’s Report found conflicts of interest and favoritism by former Senior Inspector Bernie Curran and others.

Based on the findings in the previously confidential 2014 GSA Report and the Controller’s Report, as well as information from our Office’s prior investigation into Code violations by Mel Murphy, we determined that to fully investigate the allegations about O’Riordan’s conduct at the Projects approximately 10 years ago, we needed to examine how DBI was managed during that time and specifically the tone and expectations from DBI leaders about ethical conduct. As described in Sections IV and V of this report, our review included evaluating significant events relating to DBI and the Building Inspection Commission (“BIC”) before and after the 2012 appointment of Tom Hui as acting DBI Director and his 2013 appointment as DBI Director under former Mayor Ed Lee’s administration.

The previously confidential 2014 GSA Report into 125 Crown Terrace put BIC President Angus McCarthy and former Mayor Lee’s Office on notice of how favoritism manifested itself at DBI under Hui’s leadership. That GSA Report recommended discipline of the employees involved and, like the more recent Controller’s Report, recommended supervisory quality assurance reviews of senior plan reviewers and senior inspectors’ work. But GSA never released the specific findings in the GSA Report, and Hui never implemented the recommended reforms. In contrast, we found that O’Riordan attempted to implement reforms suggested in the full GSA Report, including requiring an Inspector Assignment Wheel system for covering inspections when the assigned Inspector was unavailable, but that he was thwarted from effectuating those reforms under Hui’s leadership.

Indeed, because Hui was complicit in the favoritism and was not held to account, his subordinates could not be effectively disciplined. While three were reprimanded, our investigation revealed that, under the supervision of two of those same employees, DBI would go on to provide favorable treatment to Walter Wong just six months after the confidential findings from the GSA Report were shared with BIC President McCarthy and the Mayor’s Office. (We found no evidence that the GSA Report was shared with the entire BIC at the time.)

Sometime later, after Hui became Director, O’Riordan began to suspect that Hui was directing others at DBI to provide preferential treatment to politically connected individuals, and in 2019 he shared his concerns with the Office about former Senior Inspector Bernie Curran. In August 2021, as part of its investigation into corruption following the Mohammed Nuru scandal, the U.S. Attorney’s Office filed a criminal complaint against Bernie Curran for fraud.

O’Riordan’s suspicions were borne out. Our Office’s investigation revealed that the tone set at the top of City government at that time rewarded Hui for favoring former Mayor Lee’s political supporters. Rather than being held accountable after the 125 Crown Terrace slide, Hui stayed on as the head of DBI for six more years, and requested and received pay increases. The events

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leading up to Hui’s appointment, as well as the failure to hold him accountable after the 2014 GSA findings, suggest a deliberate promotion of individuals who would provide favoritism to the Mayor’s friends and supporters.

II. SCOPE OF INVESTIGATION AND INVESTIGATIVE STEPS

A. Request for Investigation

Our focused investigation stemmed from several public requests for an investigation by this Office.

On September 25, 2021, Mission Local ran an article about permit irregularities at properties owned by Angus McCarthy, BIC President. A copy of that article is attached as Exhibit 4. McCarthy responded to the allegations in an email to “Elected Officials” on September 27, 2021, calling the allegations “Lies, Distortions, Half-truths, and Misrepresentations.” McCarthy’s response is attached as Exhibit 5.

At a Board of Supervisors meeting on September 28, 2021, Supervisor Hillary Ronen issued a request for investigation into the allegations of improprieties and possible conflicts of interest by BIC President McCarthy. A copy of the Clerk of the Board’s letter to the City Attorney’s Office requesting an investigation is attached as Exhibit 6.

On October 17 and 18, 2021, Mission Local ran a two-part article (the “Mission Local article”) reporting that DBI Interim Director Patrick O’Riordan “kept district inspectors off of connected builders’ sites.” Exhibit 7. The allegations related to activity at the three Projects from approximately 2009 to 2012

Later on October 18, 2021, DBI Interim Director Patrick O’Riordan emailed the City Attorney’s Office to request an independent investigation into the allegations in the Mission Local article. Exhibit 8.

On October 19, 2021, Supervisor Aaron Peskin introduced a request at the Government Oversight and Audit Committee (“GAO”) for a public hearing into the allegations in the Mission Local article. That request was memorialized in an October 25, 2021, memorandum from the GAO to Patrick O’Riordan, regarding legislation introduced by Supervisor Peskin as File No. 211121:

Hearing to receive testimony on the allegations of preferential enforcement actions and related issues detailed in two Mission Loc@l [sic] articles, dated October 17, 2021 and October 18, 2021, pursuant to the Board of Supervisors the Board of Supervisors’ unlimited power of inquiry; and requesting the Director of Building Inspection to report.

Exhibit 9 (attaching the Mission Local article). On October 28, 2021, Patrick O’Riordan submitted to a voluntary interview with the City Attorney’s Public Integrity and Investigations Team. That same day, the San Francisco Examiner Editorial Board published an editorial calling

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on the City Attorney to investigate allegations at DBI. Exhibit 10. On November 5, 2021, O’Riordan responded to the allegations in an op-ed published in the Examiner. Exhibit 11.

B. Scope of Investigation

In this report, we focus primarily on the allegations in the Mission Local article that O’Riordan selectively enforced the Building Code at the Projects, while serving as a Senior Inspector at DBI. But to do that we also examined those allegations in the larger context of events that occurred at DBI beginning in 2012, including (1) events around the departure of former DBI Director Vivian Day and unusual promotion of Tom Hui to Deputy Director and then Director at DBI, (2) evidence of preferential treatment by DBI, including by Tom Hui, for Mel Murphy at 125 Crown Terrace, and (3) evidence of preferential treatment by DBI for Walter Wong at 555 Fulton Street. This examination included reviewing actions by several individuals in leadership positions at DBI and on the BIC, including former Director Tom Hui and BIC President Angus McCarthy.

In this report we do not make findings about the allegations made in a September 2021 Mission Local article that McCarthy did work outside the scope of permits at two of his properties (the “September 2021 Article”). A copy of the September 2021 Article is attached as Exhibit 4. But at O’Riordan’s direction, DBI conducted inspections at both properties in October 2021, and issued a NOV regarding the Pacheco address. The complaint history, NOV, and DBI staff recommendations for these properties are attached as Exhibits 12 and 13. The September 2021 Article also claimed that McCarthy regularly forwarded his draft BIC documents to Sean Keighran, President of the Residential Builders Association (the “RBA”), for review, a practice the Article described as “regulatory capture.” As discussed in Section V.A.5.a, below, we did uncover one additional instance of McCarthy forwarding a draft DBI Report on 125 Crown Terrace to Keighran on January 9, 2014. A final version of that DBI Report, incorporating McCarthy’s revisions, was made public a month later on February 5, 2014. Finally, perhaps more significantly, our review of the facts surrounding the GSA investigative findings from 2014 – that were shared with McCarthy at that time – showed that McCarthy, among others in the former Mayor Lee administration, was on notice of concerns about Hui providing favoritism to Murphy as early as 2014. We discuss that report and who had access to it and what happened in the aftermath of its issuance, in Section V.A.

C. Investigative Steps

Since February 2020, the Public Integrity and Investigations Team, in coordination with the Controller, has been conducting a large public integrity investigation at DBI. Investigators interviewed numerous DBI employees, current and former, as part of investigations into other projects and individuals (whether they be employees, contractors, or owners). As to this focused investigation into the allegations in the Mission Local article and the culture and leadership tone at DBI during the relevant time, we interviewed the following individuals (in chronological order):

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October 28, 2021	Patrick O’Riordan, Interim Director DBI
November 5, 2021	Steve Hajnal, retired, former Building Inspector
November 9, 2021	Joseph Duffy, Chief Building Inspector
November 10, 2021	Angus McCarthy, President, Building Inspection Comm
November 19, 2021	Kevin McHugh, Senior Building Inspector
November 22, 2021	Angus McCarthy, President, Building Inspection Comm
November 22, 2021	John Hinchion, Senior Building Inspector
November 23, 2021	Mauricio Hernandez, Chief, Code Enforcement Services
November 23, 2021	Micki Callahan, retired, former Human Resources Director
December 7, 2021	John O’Connor, Contractor, Developer 700 Valencia
December 8, 2021	Patrick Hannan, Public Information Officer, DBI
December 8, 2021	Thomas Fessler, Senior Building Inspector
December 10, 2021	Paolo Friedman, Fine Line Construction, Contractor at 2079-15th Avenue
December 10, 2021	Dan Kerley, Kerley Construction, Contractor at 1720 Irving Street
December 15, 2021	John O’Connor, Contractor, Developer 700 Valencia
December 16, 2021	Patrick O’Riordan, Interim Director DBI
December 16, 2021	Debra Walker, former BIC Member, now Arts Comm
December 17, 2021	Debra Walker, former BIC Member, now Arts Comm
December 21, 2021	Christopher Schroeder, Building Inspector
December 29, 2021	Vivian Day, retired, former Director DBI
December 30, 2021	Steve Kawa, retired, former Chief of Staff to Mayors Brown, Newsom, and Lee
January 4, 2022	Hanson Tom, retired, Principal Engineer, DBI (declined to speak on the record)
January 11, 2022	Vivian Day, retired, former Director

Norman Gutierrez, former Building Inspector, retired from DBI. In November 2021 he declined to be interviewed by our inspectors about statements he made in the Mission Local article.

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Investigators from this Office had previously interviewed Bernie Curran on July 31, 2020, and May 17, 2021, and relied on his compelled statements to reach conclusions in this report.

Investigators from this Office also reviewed DBI’s internal permit inspection histories for each of the Projects. Those materials, including the internal inspection histories that are not publicly available on DBI’s website, are attached as Exhibits 14 to 16. After the BIC appointed O’Riordan as Interim Director, he directed his staff to provide our Office’s investigators with full access to DBI’s Permit Tracking System (“PTS”) records, its information services professionals, and its human resources (“HR”) department records. O’Riordan has cooperated fully with all aspects of the Office’s investigation into DBI.

The Senior Investigator on the Public Integrity and Investigations Team assigned to the DBI-related investigations has been investigating code enforcement cases in San Francisco for more than 20 years and supported many of the City’s code enforcement actions, including the lawsuit against Mel Murphy in 2015. As part of her work over the years, she has reviewed hundreds, if not thousands, of inspection histories and special inspections reports, and she has previously interviewed dozens of DBI employees, including O’Riordan. Her work on previous investigations into similar matters informed the findings in this report.

III. ANALYSIS OF ALLEGATIONS AGAINST O’RIORDAN

A. Background on O’Riordan’s Promotion to Chief Building Inspector

From August 2008 until April 2013, O’Riordan was a Senior Building Inspector supervising anywhere from five to nine district building inspectors, including at various times Norman Gutierrez and Christopher Schroeder. In April 2013, Hui promoted O’Riordan to Chief Building Inspector. The Chief Building Inspector position, classification 6334, is a permanent civil service classification, and hiring is merit based. After an oral examination, candidates are ranked and an eligibility list is generated. Only the top three candidates can be considered for the position. O’Riordan was ranked first on the eligibility list in effect from November 2012 to November 2013. A copy of that list is attached as Exhibit 17. As illustrated in the Controller’s Report, even as Chief Building Inspector, O’Riordan was only one of five Chiefs who answered to the Deputy Director of Inspection Services. Exhibit 18 at pp. 21 and 30; see also Exhibits 19-20 (DBI org chart).

B. No Evidence of Favoritism by O’Riordan at 26th Street Project (2012)

The allegations about the 26th Street Project are that in 2012, former BIC president Mel Murphy (who was no longer on the BIC by March of that year) constructed a five-story, 11-unit structure at 3418 26th Street without required DBI permits or inspections. According to the October 2021 Mission Local article, Schroeder claims that for months in 2012, he observed the unpermitted construction at the 26th Street Project from his car, but never approached the property. He claims he determined the address by looking at the adjacent buildings and then referring to maps back at DBI. Schroeder claims that he notified O’Riordan repeatedly of the unpermitted work in the months before O’Riordan inspected the site and issued a Notice of Violation (“NOV”) there on January 4, 2013. According to the article, Schroeder said: “I *do* remember the job. I did

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report it to Patrick O’Riordan. Numerous times.” The article further states that Schroeder said: “I reported it to my immediate supervisor, Patrick [O’Riordan], and I can’t remember *exactly* what he said – but he said, ‘don’t take any action right now.’”

The Mission Local article describes O’Riordan’s actions in January 2013 at the 26th Street Project as “big-foot[ing]” Schroeder, who was the District Inspector, and blocking Schroeder from taking appropriate action on the project. The suggestion is that O’Riordan knowingly allowed the unpermitted work to continue and blocked Schroeder from acting, as preferential treatment for Mel Murphy, and that O’Riordan’s actions were comparable to those of “accused federal criminal Bernie Curran.”

Our investigation shows that on January 2, 2013, the San Francisco Chronicle began asking DBI about the construction at the 26th Street Project, and on January 4, 2013, O’Riordan went to the property and issued an NOV and stop-work order. DBI’s internal PTS records of the inspection history at the 26th Street Project do not reveal any preferential treatment. Exhibit 14.

The allegations of favoritism by O’Riordan at 26th Street rise and fall with the credibility of Schroeder, who represented in October 2021 that back in 2012 he alerted O’Riordan to the unpermitted construction repeatedly over the months before O’Riordan issued an NOV there on January 4, 2013.

1. O’Riordan Denied Knowing About the Unpermitted Construction until January 4, 2013 When He First Inspected the Site and Issued a NOV

O’Riordan told investigators that he was not aware of the 26th Street Project until he was given the complaint and sent to the property by his supervisor. He believed that all happened on the same day, January 4, 2013. O’Riordan did not remember who asked him to respond to the complaint, but he thought it likely was his supervisor at the time, Dan Lowrey. O’Riordan was a Senior Inspector directly supervising Schroeder, and the property was in Schroeder’s district.

O’Riordan said he went to the site and observed that workers had poured the foundation and framed the building up to the roof on a site permit. O’Riordan does not remember any conversations with Schroeder about the project before or after issuing the NOV. If there was a conversation, he said it could only have been the same day he learned of the complaint in January 2013.

O’Riordan said that if Schroeder had seen unpermitted construction at the 26th Street Project, he should have issued an NOV on the spot. According to O’Riordan, Schroeder did not need supervisory approval to issue an NOV. When asked if it would ever be appropriate for a District Inspector to ask his supervisor before issuing an NOV, O’Riordan stated:

It could be, under certain circumstances, but I would suggest that if you have something as egregious as an entire building being built without

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having permits to do any physical work at the site, then in my opinion, that’s a no-brainer, that’s an NOV.

2. O’Riordan as Interim Director Suspended Schroeder in April 2021

On December 1, 2020, Schroeder received a notice of DBI’s intent to suspend him for five days for unprofessional conduct and mistreatment of co-workers. The notice was signed by O’Riordan as Interim Director of DBI. The investigation into Schroeder’s actions, conducted by the City’s Department of Human Resources, found that Schroeder (1) made an inappropriate and unprofessional comment to then-Deputy Director Ed Sweeney in the elevator lobby, and (2) threatened to end the career of his supervisor in Code Enforcement. On January 8, 2021, a hearing officer from the Office of the Treasurer and Tax Collector upheld the proposed five-day suspension. After Schroeder served one day of discipline, negotiations on the final discipline continued into April 2021 but ultimately Schroeder would not accept terms to avoid further discipline. On April 6, 2021, O’Riordan issued final discipline for the remaining four-day suspension, which Schroeder served on April 12-15, 2021.

3. Schroeder’s Statements in 2014 Contradict His Statements to Mission Local in 2021 – Seven Years Later

The City Attorney’s Office questioned Schroeder about the 26th Street Project in 2014, as part of its investigation into 125 Crown Terrace. Back in 2014, Schroeder seemed entirely unaware of the 26th Street Project. Investigators specifically asked Schroeder about 3418 26th Street. Schroeder said: “I don’t recall ever being out there.” When pressed about an entry in the public-facing Permit Tracking System, Schroeder said, “Uh, I was never out there, you know. I don’t know.” (Emphasis added).

The City Attorney’s Office investigator noted that the public facing PTS records for the 26th Street Project showed Schroeder as the assigned Inspector:

Stuart: But your name is on it.
 Schroeder: Maybe somebody, you know, was covering for me or something like that, I don’t know, but if my name was on it, it’d be on a paper job card or it’d be entered on the computer under my name.
 Stuart: But it is entered on the computer.
 Schroeder: But when they get entered under my name, sometimes people don’t fill out the subsequent. If it’s in my district, I’m covering for somebody else, uh, the old system will show my name preceding whoever did it after. And a lot of these things get entered with, uh, without people writing in.
 Stuart: So let’s see, let’s see. So there was a –

...

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Schroeder: Why don’t you get the NOV and see if my writings on it?
 Stuart: First NOV issued by acting Chief Building Inspector Patrick O’Riordan.
 Schroeder: Yeah, that’s not my name.
 Stuart: So, so the –
 Schroeder: So this is who issued it. This is my name. It will come up no matter who’s doing the inspections on any of these, my name will always come up preceding this.
 Stuart: And that’s because it’s your district?
 Schroeder: Yeah. That’s the way the computer system works.
 . . .
 Stuart: Okay. So you don’t believe you ever were at 3418 26th Street?
 Schroeder: Not to my knowledge, no.

At no point in the 2014 interview did Schroeder state that he had observed unpermitted work at the 26th Street Project from his car. And at no point did Schroeder complain that O’Riordan – or anyone else at DBI – had kept him away from either of the two Mel Murphy projects in his district. Instead, Schroeder said he was unaware of the 26th Street Project and described his absence at 125 Crown Terrace as just a function of him being busy or another inspector being light.

4. Schroeder Would Not Speak Voluntarily to the City Attorney’s Office

City Attorney’s Office investigators tried for weeks to schedule a voluntary interview with Schroeder. On December 6, 2021, as Interim Director, O’Riordan directed Schroeder to an interview on December 9, 2021. On December 9, Schroeder appeared without a union representative despite being notified of his right to representation in the letter, and decided at the interview that he wanted representation, so the interview was continued to December 13, 2021, when Schroeder’s union representative was available. Schroeder’s union representative called the morning of December 13, 2021, to again continue the interview. We finally interviewed Schroeder with his union representative on December 21, 2021.

5. At the Directed Interview, Schroeder Suggested that His Memory Improved Over Time

On December 21, 2021, we interviewed Schroeder and asked about favoritism that he observed at DBI over the years. He had very little first-hand information to share and repeatedly referred to emails and DBI records before speaking. As to the 26th Street Project, Schroeder repeated his claims in the press that he had observed the unpermitted construction at the 26th Street Project for months and notified O’Riordan repeatedly. Schroeder said he never got out of his car or

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approached the property, but he claimed he was able to determine the address by looking at the adjacent buildings and then referring to maps back at DBI. Schroeder told investigators that he alerted O'Riordan to the unpermitted construction for months. Investigators then played Schroeder the recording of his statements in 2014 and asked him about the inconsistencies:

DCA STEWART: So my question is, why didn't you tell the City Attorney's Office about this conversation with O'Riordan back then in 2014?

SCHROEDER: As I said before, because what I was told was that they wanted me to lie. O'Riordan and Dan Lowery wanted me to say that they tried to call me four times.

DCA STEWART: Right, but why didn't you share any of that with the City Attorney's Office? I mean they were investigating whether or not Mel Murphy had exerted undue influence on anyone at DBI and caused this catastrophe. A house slid down the hill and it was only stopped by some big vehicle at the bottom. It could have, you know, killed people. So you didn't share any of this information with the City Attorney's Office in 2014.

SCHROEDER: Maybe I didn't recall it at the time.

DCA STEWART: Well, it's much closer in time to those events, right, it was within a year or a year-and-a-half of the events. We're now almost a decade away.

SCHROEDER: Yeah, I don't recall why and I can't ruminate on subjective hypotheticals.

DCA STEWART: Well, is it possible that your memory today is wrong or muddied and no longer accurate?

SCHROEDER: Or maybe it's clearer, I don't know.

DCA STEWART: Are you really sitting there telling me you think your memory today in 2021 is clearer about events that occurred in 2012 and 2013?

SCHROEDER: I don't know, it depends on what was happening in my life and my personal life.

DCA STEWART: So what was happening in your personal life?

SCHROEDER: I don't believe that I need to discuss my personal life.

DCA STEWART: Well, only if you think it impacted your memory back then.

SCHROEDER: I don't know what impacted it.

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DCA STEWART: Well, I’m going to be very candid with you. My assessment is that your memory was likely better in 2014 than it is today, and on balance, I think it’s unlikely that what you are telling me you remember today is more accurate than what you shared with the City Attorney’s Office in 2014.

SCHROEDER: I respect your opinion.

6. The Evidence Supports a Finding that Schroeder Did Not Notify O’Riordan of Unpermitted Construction at the 26th Street Project Before January 2013

The evidence supports a conclusion that Schroeder did not notify O’Riordan about the 26th Street Property, and O’Riordan did not prevent Schroeder from enforcing the Building Code at that project. Indeed, the evidence supports a finding that Schroeder was completely unaware of the unpermitted construction until even after O’Riordan issued an NOV there in response to a complaint. In 2021, Schroeder claimed that he saw the construction at the 26th Street Project from his car in 2012, that he then determined the address and checked the permit status at the office, and that he reported the unpermitted construction to O’Riordan.

But in a recorded interview with the City Attorney’s Office in 2014, Schroeder denied ever being at the 26th Street Project. During the 2014 interview, Schroeder acted as if he were unaware of the project altogether and appeared to learn about O’Riordan’s NOV in real time at the interview when shown the document. In April 2021, more than five years after the discovery of unpermitted construction, O’Riordan, as Interim Director, suspended Schroeder for five days based on findings that Schroeder made threats to different supervisors, including a threat to ruin his immediate supervisor’s career. Six months later, Schroeder made his allegations against O’Riordan for the first time.

When investigators confronted Schroeder with his prior statements about the 26th Street Project, Schroeder suggested that his memory might have improved over time. When investigators told Schroeder it was not credible that his memory of events that occurred in 2012 was better in 2021 than in 2014, Schroeder said only: “I respect your opinion.” Finally, the evidence establishes that as the District Inspector, Schroeder had authority to approach and inspect any building site in his district and to issue a NOV or take other action if there was unpermitted work, and he did not explain why he didn’t do that in this case. Considering all of the evidence, we find that it is more likely than not that Schroeder did not notify O’Riordan about the 26th Street Project, and instead made inaccurate statements to the press about O’Riordan in October 2021, potentially in retaliation for O’Riordan’s role in disciplining him earlier in April 2021.

C. No Evidence of Favoritism or Improper Conduct by O’Riordan at 25th Street Project (2011)

Here, the allegation is that O’Riordan went easy on the developer at the 25th Street Project in 2011 by issuing a Notice of Violation (“NOV”) rather than declaring an unlawful demolition under the Building Code, which would have prohibited any construction at the site for five years.

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The October 2021 Mission Local article states that O’Riordan’s NOV at the 25th Street Project in 2012 “clearly” describes an unlawful demolition but avoids using the term “unlawful demolition” or citing the San Francisco Building Code. The article states:

Again, Schroeder says he’d have done it differently. He’d have written it up as an unlawful demolition. And, in doing so, he’d have vastly circumscribed what could be built on this site. The owner, or his successors would be limited to matching what was previously there: “Same size, same footprint, same everything,” Schroeder says. “It’s to discourage people from tearing down these buildings.”

The Mission Local article suggests O’Riordan prevented Schroeder from enforcing the Building Code in Schroeder’s assigned district to protect “connected builders.” But the article also describes the owner of the 25th Street Project at that time – Jamie Karrick – as a mechanic and restorer of vintage motorcycles and cars who “quickly got in over his head.” The article says Schroeder “believes Karrick had no malign intent and the situation simply got out of hand.”

By all accounts, a complaint about the 25th Street Project was lodged with DBI on November 16, 2011, and O’Riordan issued a NOV the same day. When we interviewed him, O’Riordan was adamant that he handled the NOV at the 25th Street Project appropriately. He stated that an unlawful demolition freezes the status quo at a site for five years. This, he said, can result in complaints from neighbors frustrated with issues created by an unfinished construction site in their neighborhood. According to O’Riordan, the NOV he drafted resulted in the project returning to the Planning Department for further review before any additional construction could proceed and accomplished what was needed to ensure compliance with local Codes.

According to O’Riordan, “we decided, it was decided, and I don’t know by who, that the best approach was [to] let these things go to Planning, let Planning figure out how to deal with them, and that’s exactly what happened in this case.” Current Deputy Director Joseph Duffy confirmed that “the unlawful demo route had only been used once, I believe, at DBI in 15 years.” When Schroeder was interviewed on December 21, 2021, he conceded that DBI had not declared an unlawful demolition under the Building Code in ten years.

O’Riordan treated Karrick’s 25th Street Project as he would have treated any permitted project where demolition exceeded the scope of the permit. DBI’s longstanding practice has been to issue an NOV if demolition exceeds the scope of a permit. Given that Karrick was politically unconnected and unsophisticated, it would have been a violation of DBI’s Code of Conduct for O’Riordan to treat Karrick worse than other similarly situated owners. It is more likely than not that Schroeder made inaccurate statements to the press about O’Riordan’s enforcement at this property in retaliation for the imposed discipline.

Regardless of whether O’Riordan’s approach reflected a best practice by DBI, we did not find any credible evidence that O’Riordan went easy on Karrick as a favor to a connected builder. The building owner was by all accounts – including Schroeder’s – unsophisticated and in over

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his head. The Mission Local article suggests that O’Riordan went easy on the violations he found at the 25th Street Project to benefit a potential *future* owner of the property and that O’Riordan’s motivation in 2012 is allegedly suspect because Karrick, the mechanic owner, later sold the property to someone who hired former BIC President Rodrigo Santos to complete the project. This theory of proof that O’Riordan engaged in favoritism – before Santos’ involvement at the property – is not supported by any reliable evidence from the time of the decision, and therefore unpersuasive based on the evidence we reviewed.

D. No Evidence of Favoritism or Improper Conduct by O’Riordan at Valencia Street Project (2009)

The allegation in the Mission Local article as to the Valencia Street Project is that O’Riordan performed inspections there in 2009 and failed to enforce identified violations. The article relies on statements by former DBI inspector Norman Gutierrez, the assigned Inspector for that district in 2009. Gutierrez told the journalist that he “was taken off this job because he was applying the code impartially and inconveniencing a connected builder.” According to the article, Gutierrez was badgered by then-Deputy Director Ed Sweeney about this project, “[a]nd then he never went back.” Gutierrez is quoted as saying: “Senior inspectors aren’t supposed to go out and do district inspectors’ work.” The article does not identify what Building Code violations O’Riordan allegedly failed to enforce. (As mentioned in Section II, Gutierrez, since retired from DBI, declined requests this Office made to interview him.)

The internal DBI permitting history for the Valencia Street Project is attached as Exhibit 16. Nothing in the inspection history reflects favoritism or a failure to enforce the Building Code. Mission Local reported that Norman Gutierrez said he was “taken off the job” at 700 Valencia Street, because he was “applying the code impartially and inconveniencing a connected builder.”

Mission Local quoted DBI’s statement regarding the Valencia Street Project verbatim:

The project sponsor has said they contacted Gutierrez to conduct a site visit to discuss the project with the new district inspector assigned to the area. Not receiving a response, the owner escalated his request to the senior inspector for the district, O’Riordan, who spoke with the owner and subsequently determined that the project was sufficiently complicated that he needed to conduct a site visit. In November 2009, O’Riordan conducted the inspections himself and, on 3/29/12, issued the CFC [Certificate of Final Inspection]. Having the senior inspector step in is standard protocol when there’s an issue at a property or a member of the public complains about an inspector.

Exhibit 7. The Mission Local reporter shared DBI’s statement with Gutierrez. Gutierrez reportedly responded: “There’s a fallacy in that.” According to Gutierrez, the project was not too complicated for him; he reported that he has a master’s degree in architecture from the University of California at Berkeley. According to Gutierrez, he was taken off the job so that

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O’Riordan could go easy on a connected builder. Gutierrez also told Mission Local that “Senior inspectors aren’t supposed to go out and do district inspectors’ work.” Gutierrez further stated:

[C]onnected builders know they can make calls when a district inspector tells them no. They can complain that the inspector was rude and unhelpful. And, in essence, they can choose who inspects their work. Or who *doesn’t* inspect it.

But according to O’Riordan and the contractor, Gutierrez was never at the site and never interacted with the contractor. And, as mentioned above, Gutierrez declined to talk to our investigators after he made the allegations.

In December 2021 we interviewed the contractor, John O’Connor, by phone. He remembered the Valencia Street Project. He said that Gutierrez was never on his job. O’Connor said that the assigned District Inspector before Gutierrez had conducted all of the inspections of the foundation up to the post-tension concrete decking on the first floor. O’Connor further explained that there was a downturn in the economy in 2009, and when the previous District Inspector was laid off, Gutierrez was assigned to the district.

O’Connor said he called Gutierrez multiple times. When he did not get a return call, he called the Senior Inspector, O’Riordan. He believed there was a shortage of Inspectors at that time due to the layoffs.

O’Connor claimed that O’Riordan was “one of the toughest inspectors I’ve ever had on a job.” He described O’Riordan as “very tough” and “exceptionally thorough.” As an example, he explained that while his plans called for two hand rails on the stairs in the main hallway, he only installed one, because the building was built under the 2001 Building Code. He told O’Riordan, “I don’t have to put that second hand rail in, because the code says I don’t have to.” While it was true that the governing Code did not require two handrails, the plan called for two handrails. O’Riordan told him he would need to get a revision permit to remove the second handrail from the plans. The paper job card for the Valencia Street Project, signed by O’Riordan, corroborates O’Connor’s memory. In April 2010, O’Riordan wrote on the job card: “For CFC [certificate of final completion] (1) revision to eliminate 2nd h/rail, (2) . . .” Exhibit 16 at p. 18 of 32.

There is no record of Gutierrez visiting the property or entering any notes into PTS. See Exhibit 16. Gutierrez was disciplined in 2013 for lying to O’Riordan, then his direct supervisor and a Senior Inspector, about his whereabouts during the work day, and may be biased against O’Riordan based on that history. And, again, Gutierrez refused to be interviewed as part of our investigation. Considered all together, the evidence demonstrates that O’Riordan’s inspections and enforcement actions at the Valencia Street Project (one of his districts as a Senior Inspector) were appropriate, and did not evidence any favoritism or violate any DBI or Code requirements.

E. No Evidence of Favoritism by O’Riordan at the Kelly Residence in 2012

On December 19, 2012, O’Riordan, then a Senior Inspector, went outside his districts to an address on 11th Avenue and issued an NOV. According to O’Riordan, he went to 11th Avenue in response to a neighbor’s complaint, because DBI was short staffed during the holidays.

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O’Riordan remembered dressing down the owner, a man wearing an expensive-looking, fawn-colored overcoat, for compromising his neighbor’s foundation. When O’Riordan returned to DBI, Ed Sweeney told him that he had just yelled at Harlan Kelly, the General Manager of the SFPUC. O’Riordan did not return to the Kelly project after the assigned senior inspector returned from vacation. The NOV O’Riordan issued there was abated by Bernie Curran a year later on December 26, 2013. Internal correspondence in the City shows that Hui was copied on correspondence about inspections at the Kelly’s house in 2012 and 2013. Exhibit 21. A copy of the complaint on December 19, 2012, and the inspection history for this address is attached as Exhibit 22.

To date, for every DBI inspection that we reviewed, O’Riordan appears to have enforced the Building Code consistently and appropriately regardless of which district he was in or whose project he inspected. While, as described below, O’Riordan admitted to suspecting that others within DBI were providing preferential treatment at Hui’s direction, we did not find any credible evidence that O’Riordan himself provided preferential treatment.

F. Unlike Bernie Curran, O’Riordan Did Not Schedule Same Day Inspections for Himself Outside His Districts

The Mission Local article describes O’Riordan’s actions in January 2013 at the 26th Street Project as “big-foot[ing]” his district inspector – Christopher Schroeder. The article suggests that O’Riordan’s actions were comparable to those of “accused federal criminal Bernie Curran traveling out of his district.” For a number of reasons, O’Riordan’s actions at the 26th Street Project were not comparable to Curran’s.

First, as described below in Section IV, the inspection assignment wheel – creating a DBI policy making senior inspectors the last option for covering inspections when a district inspector is unavailable – was not implemented until 2014. Second, unlike Curran, O’Riordan directly supervised the assigned district inspector for each of these Projects. And finally, unlike Curran who has been charged with bribery and has revised his financial disclosures to admit financial interests in several properties he inspected, there is no evidence that O’Riordan overlooked Building Code violations or had a financial interest in any of these project sponsors.

IV. WHILE O’RIORDAN DID NOT ENGAGE IN POLITICAL FAVORITISM, AMPLE EVIDENCE EXISTS OF A CULTURE OF POLITICAL FAVORITISM AT THE TIME SUPPORTED BY DBI’S THEN LEADERSHIP AND AN UNETHICAL TONE FROM THE TOP

As described in Section III above, we did not find O’Riordan engaged in selective enforcement or favoritism at the Projects when he was a Senior Inspector about a decade ago, nor did we find any such wrongful conduct by O’Riordan at the other projects we reviewed. But we did find ample evidence demonstrating a culture at DBI at that time of favoritism and selective enforcement for politically connected individuals, as well as outright corruption by some DBI employees. That culture reveals a failure of leadership at DBI and those with the authority to oversee DBI, including by former DBI Director Tom Hui, to prioritize or model ethical conduct

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and to implement reforms that would limit the ability to provide preferential treatment and provide greater transparency and accountability at DBI.

As mentioned above, we determined that to fully investigate the allegations about O’Riordan’s conduct at the Projects from 2009-2012, we needed to examine how DBI was managed during that time and specifically the tone and expectations from DBI leaders about ethical conduct. Accordingly, we also examined these three matters for overall context:

- (1) significant events relating to DBI and the BIC before 2013 surrounding the appointment of Tom Hui as permanent DBI Director under former Mayor Ed Lee’s administration;
- (2) a previously confidential report that the City’s General Services Agency prepared in 2014, under the supervision of then City Administrator Naomi Kelly, showing that Hui and his staff had improperly favored former BIC President Mel Murphy at 125 Crown Terrace, and events surrounding that report; and
- (3) public integrity findings by the Controller and this Office, informed by the work of DBI under Interim Director O’Riordan, uncovered after January 2020 when federal criminal charges against the former Director of Public Works Mohammed Nuru implicated former DBI Director Hui in alleged favoritism of Walter Wong at 555 Fulton Street.

In sum, what we found was a larger pattern of a failure to hold those accountable at DBI for favoritism and selective enforcement, and instead a tone set at the top of City government at the time that rewarded Hui for favoring former Mayor Lee’s political supporters. Hui was appointed Director after the BIC promoted him through an unusual process and following a threat that Mel Murphy made to Hui’s predecessor Vivian Day to have her replaced because of her efforts to enforce the Building Code against him at 125 Crown Terrace. The previously confidential 2014 GSA Report and the investigation that led to it provided an opportunity to hold Hui accountable for his role in 125 Crown Terrace and to discipline the DBI employees who engaged in wrongdoing. But the full report was not made public, and the opportunity to implement meaningful reforms was lost. Instead, the failure to address the problems that were involved at the Projects and at 125 Crown Terrace allowed a very similar wrongful practice of favoritism and selective enforcement to repeat itself at 555 Fulton Street six months later, as shown in the Controller’s Report. And Hui was then rewarded as Director of DBI with pay raises instead of being held accountable either for his own conduct or for failing to take steps to root out corruption in the department and to make needed reforms to put an end to favoritism and selective enforcement.

A. Background of the Building Inspection Commission, Department of Building Inspection and Key Individuals

The San Francisco Charter establishes the Building Inspection Commission (BIC) (Charter §4.121.) The BIC oversees DBI, which is responsible for the enforcement, administration and

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interpretation of the City's Housing, Building, Mechanical, Electrical, and Plumbing Codes. (Charter, Appendix D, §D3.750-4.) The BIC consists of seven members, who serve two-year terms. (Charter §4.121.) The Mayor appoints four members: a structural engineer, a licensed architect, a residential builder (who must be a licensed contractor), and a representative of a community-based non-profit housing development corporation. (Charter §4.121.) The President of the Board of Supervisors appoints three members: a residential tenant, a residential landlord, and a member of the general public. (Charter §4.121.) Members of the BIC may be suspended by the appointing officer and removed by the Board of Supervisors for official misconduct under Charter section 15.105. (Charter §4.121.) The BIC appoints and may remove the department head. (Charter §4.121.) Unlike the usual City process for appointment of directors under commissions, the BIC does not forward proposed nominees to the Mayor for the Mayor to appoint the DBI Director.

DBI operates using a Code of Professional Conduct. A copy of the DBI Code of Professional Conduct that was adopted in April 2009 and in place during the period that is the subject of this report is attached as Exhibit 23. The Code of Professional Conduct applies to BIC Commissioners as well as customers and employees of DBI: “Inasmuch as we must monitor our own professionalism, it is also important that the customer and Commissioner conduct themselves with respect and professionalism.” (Interim Director O’Riordan reissued the Code of Professional Conduct under his name in July 2020. A copy of the current Code of Professional Conduct is attached as Exhibit 24. In the eight years he led DBI, Hui never reissued or put his name on the Code of Professional Conduct.)

The Code of Professional Conduct in place since 2009 presents a set of ethical rules and guiding principles. The Introduction opens by stating that “[a] position in government is a position of public trust. Thus the standards of behavior for public employees are often higher than those for employees in the public sector.” In addition to helping employees determine “the difference between right and wrong,” the Code’s stated purpose is to “help you determine if some action might give the appearance of being questionable, even if, technically it is not. The Code specifically distinguishes good customer service from improper preferential treatment, counseling that:

Customer service delivers to every customer the same level of assistance from every member of the department. Preferential treatment delivers extraordinary effort or access—including advantage, favor, special treatment or priority—over and above the normal level of service to a specific few by one or more employees...It does not matter whether the person making such a request is a public official, an official’s staff member, relative, friend, DBI manager or other employee, former employee or customer; your response should be the same. Explain to the individual that DBI policy is that every customer receives the highest level of customer service. In addition, as presented in the DBI Code of Professional Conduct, explain that integrity and public safety are standards you personally insist upon.

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See Exhibit 23 at p. 11. Mel Murphy is a developer and general contractor. Mayor Gavin Newsom appointed him to the BIC on January 6, 2006. Murphy was President of the BIC from March 18, 2009 to March 16, 2011. He would continue to serve on the BIC until February 15, 2012. Murphy has owned many development projects in San Francisco besides the 26th Street Project, including the residential construction project at 125 Crown Terrace.

Murphy was associated with a political action committee headed by Rodrigo Santos called San Francisco Coalition for Responsible Growth (“CRG”). Rodrigo Santos is a licensed engineer who was appointed to the BIC in January 2000 by former Mayor Willie Brown. Santos was the BIC President from March 1, 2004, through to the end of his tenure on the BIC in February 2005. Santos was the engineer of record on both the 26th Street Project and 125 Crown Terrace.

Both of these Mel Murphy projects were in Christopher Schroeder’s assigned district in mid-2012 through the end of 2013. As described above, Schroeder is the DBI employee who, in October 2021, publicly accused O’Riordan of keeping him from issuing an NOV at the 26th Street Project in 2012. O’Riordan issued the NOV’s at both of Murphy’s properties in Schroeder’s district – at the 26th Street Project, as a Senior Inspector in January 2013, and again at 125 Crown Terrace, as Chief Building Inspector in December 2013. Both NOV’s were prompted by complaints rather than routine inspections.

Ed Lee served as Director of Public Works from 2000 to 2005. From 2005 to 2011, Lee served as former Mayor Gavin Newsom’s appointee as City Administrator. On January 4, 2011, the Board of Supervisors appointed Lee to complete Mayor Newsom’s term as Mayor after Newsom was elected Lieutenant Governor of California. In November 2011, Lee was elected Mayor.

Mayor Lee appointed Angus McCarthy to the BIC in early 2012. As described below, BIC meeting minutes from March 2012 show that at his first meeting as a BIC Commissioner, McCarthy was elected BIC President after receiving the endorsement of five members of CRG.

In addition to being BIC President, Angus McCarthy serves on the board of the Residential Builders Association. The RBA describes itself as “dedicated to improving conditions and enhancing the common interest of the construction industry in San Francisco.” In 2013, a civil grand jury described the “powerful Residential Builders Association” that joined with tenant advocacy groups in 1994 to champion an initiative that created the current DBI and BIC in the place of the prior Bureau of Building Inspection within the Department of Public Works. Exhibit 25 at p. 9. Sean Keighran serves as the President of the RBA.

Even after publicity about Murphy’s unpermitted construction at the 26th Street Project in January 2013, Mayor Lee nominated Murphy to the Port Commission. On March 17, 2013, the Board of Supervisors approved Murphy’s appointment to the Port Commission. Murphy served as a Port Commissioner until April 2015. Murphy stepped down only after he was sued by the City Attorney’s Office for unlawful conduct at numerous projects, including the 26th Street Project and 125 Crown Terrace.

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Murphy, Santos, McCarthy, CRG, and the RBA all supported Ed Lee’s mayoral campaign in 2011.

B. Former DBI Director Day was Removed to Make Room for Tom Hui not long after Mel Murphy Threatened “I’ll have your [Day’s] ass”

Our investigation shows that not long after Mel Murphy threatened former DBI Director Vivian Day in connection with 125 Crown Terrace, she was pressured to resign and did so. The BIC promoted Hui as Deputy Director through a very unusual process and then made him Director.

On December 29, 2021, we interviewed Day by telephone. Day said that Mel Murphy was BIC President during most of her tenure. During the interview, Day voluntarily shared that a medical condition might impact her memory.

Day said that DBI had a Code of Conduct when she arrived at DBI from the City of Alameda in 2007, but no one was using it. She said she “resurrected it.” Day shared that before 2012, she thought she had brought the Department and BIC around to “my way of thinking.” She said that she wanted “fairness and consistency” along with good customer service in both permitting and inspections. She stated that she started the system of customers taking a number at the counter and being served in order by the next available employee to prevent customers from forum shopping and employees from playing favorites.

Day said she knew that Murphy’s permit at 125 Crown Terrace was on hold when she started at DBI in 2007. She said that Hanson Tom [a former Principal Engineer and Acting Deputy Director of Permit Services] did not want to approve the submitted plans, because the foundation was not up to Code.

According to Day, in 2012, Murphy met with her personally about his permit application to build at 125 Crown Terrace. Day told him the permit application was on hold, because the planned foundation was not up to Code. Day said that she explained to Murphy that he needed to get an engineer to submit suitable foundation plans, and she asked him if he wanted her to hire an outside agency to review his plans. According to Day, Murphy told her that either she would approve the plans or “little lady, I’ll have your ass.”

Day said that within a month of that meeting with Mel Murphy, she was called to a meeting with BIC President Angus McCarthy and Micki Callahan, then the City’s Human Resources Director. They told Day that the BIC would remove her if she did not resign. They offered her a choice; if she resigned, she could stay on at her current salary until she reached five years of employment and her pension vested. Day chose to resign as Director rather than be removed before her pension vested. Day said she regretted leaving DBI before completing projects she cared about, including changes to the Permit Tracking System (“PTS”).

Day was contacted again by our investigators on January 11, 2022, regarding the promotion of Tom Hui in March 2012, from his position as a classification 5214 Building Plans Engineer to a classification 953 Deputy Director III. Day said she would never have made Hui a Deputy

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Director. She said her top person in plan check was Hanson Tom. When asked why the records showed Hui's promotion to Deputy Director the March before her resignation, she struggled to remember and suggested we check the BIC meeting minutes. She thought she might have been on leave when Hui was promoted. She said that by March 2012, she was under tremendous pressure and would have appointed whomever the BIC wanted so that she could stay long enough for her pension to vest.

Personnel records confirm that Day served as DBI Director until July 1, 2012, and that she stayed on with DBI until September 29, 2012, in a temporary position as Special Assistant to the Director.

1. Former HR Director Micki Callahan Said That Mayor Lee's Office Asked Her to Negotiate Day's Release

On November 23, 2021, we questioned former Human Resources Director Micki Callahan by phone. Callahan confirmed that the Mayor's Office asked her to negotiate Day's release. Callahan did not remember who was Mayor at the time, but she remembered speaking with the Mayor's Chief of Staff, Steve Kawa. (Ed Lee was Mayor in 2012 when Day resigned. Steve Kawa served as Chief of Staff to former Mayors Willie Brown, Gavin Newsom, and Ed Lee.) Callahan remembered that the Mayor's Office wanted Day removed for being ineffectual. Callahan further remembered meeting with Day and negotiating an agreement where Day would resign as Director and continue at DBI in a temporary position at the same rate of pay until her pension vested. In exchange, the Mayor's Office would not pursue her release by the BIC. Callahan said that Day's special position was for a finite period of time to complete a software project.

While Callahan did not remember Angus McCarthy being present when she met with Day to negotiate the release, she did remember speaking with McCarthy about releasing Day. She said McCarthy might have been present at her meeting with Day, because Day reported to the BIC, but Callahan thought that McCarthy was "probably not" a part of her meeting with Day. Callahan later said that McCarthy was close to the Mayor's Office, and he could have been at the meeting. Callahan remembered that Day did not complete the software project before leaving DBI.

2. Mayor Lee's Chief of Staff Corroborated Callahan

On December 29, 2021, we questioned Steve Kawa, Mayor Lee's Chief of Staff in 2012, informally by phone. Kawa remembered that Day "was working on the tech system that would track between DBI and Planning. It never came to fruition." He thought that there was concern that her system was not happening fast enough. He did not remember speaking with Angus McCarthy or Mel Murphy about Day. Kawa said he would have consulted with Micki Callahan, and suggested that the investigator call Callahan for information about why Day left DBI.

3. McCarthy Denied Knowing of Pressure on Day to Resign

In a voluntary interview with the City Attorney's Office on November 22, 2021, McCarthy said he did not remember attending a meeting with Day and Callahan. Nor did he remember

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discussing Day’s removal during a closed session of the BIC. According to McCarthy, “she resigned and we accepted it.” He explained, “I had no history with Vivian [Day]. All I knew was that she had a tough job through a difficult time [layoffs during the Great Recession] and that she had expressed interest to the Mayor’s Office that she would like to step down and resign.”

4. Former BIC Commissioner Debra Walker Suggested Investigators Speak with Hanson Tom, Hui’s Predecessor as Acting Deputy Director of Permit Services, Because “Hui Demoted Him A Lot”

On December 17, 2021 we interviewed former BIC Commissioner Debra Walker by phone. According to Walker, Tom Hui thought it was his job as Director to allow those in authority on the BIC like Murphy and Santos to run roughshod over DBI. Walker also said that McCarthy “made excuses for Rodrigo Santos all along.” She said that McCarthy told her, “Rodrigo [Santos] is a good guy. It’s the contractors who deviate from the plans.” She said she told McCarthy, “That’s interesting, because it seems to happen so frequently.” She said that McCarthy also thought that Bernie Curran was “wonderful.” Walker suggested that investigators speak with Hanson Tom, because Hui “demoted him a lot.”

Investigators attempted to interview Hanson Tom, now retired. Tom was a former Principal Engineer and former Acting Deputy Director for Permit Services toward the end of Day’s tenure as Director. Tom did not want to speak on the record. But, contrary to Day’s memory, he did not remember reviewing the 125 Crown Terrace permit before Day’s departure. But given that Murphy had begun submitting permits and drawings for this project in 2007, it is probable that one or more iterations crossed Hanson Tom’s desk.

C. Tom Hui Gained Greater Power and Influence at DBI, Including Through an Unusual Process

The BIC under President McCarthy promoted Hui to Deputy Director in March 2012, three months before making him Acting Director in June 2012. The BIC’s selection of Hui as Deputy Director was highly unusual, as the appointment of deputy directors is done by the director, not by the commission. As Director, Hui was rewarded with pay raises, despite reports that found favoritism and other wrongdoing in the department.

1. Hui appointed Deputy Director in March 2012 and Acting Director in June 2012.

At the March 21, 2012, BIC meeting, Angus McCarthy was first welcomed as a new commissioner on the BIC. The minutes of that meeting are attached as Exhibit 26. Former Commissioner Mel Murphy was present and received a certificate of appreciation for his prior service on the BIC. The BIC then took nominations for BIC President. Five members of CRG, including Luke O’Brien and Rodrigo Santos (the agent and engineer of record, respectively, for Mel Murphy at 125 Crown Terrace) endorsed McCarthy, and McCarthy was elected President. Luke O’Brien is Murphy’s brother-in-law and business associate. After electing Warren Mar as its Vice President, the BIC met in closed session regarding “PUBLIC EMPLOYEE APPOINTMENT – DEPUTY DIRECTOR.” The BIC reconvened, and President McCarthy

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announced that “Tom Hui was overwhelmingly approved as Deputy Director of Permit Services.”

On June 6, 2012, during the last agenda item, the BIC considered the appointment of a new Director. The minutes of that meeting are attached as Exhibit 27. Vice President Mar stated that he was very upset about the topic and asked that it be considered in open session. Commissioner Debra Walker complained that she found out from other sources that “there is an effort to solicit a resignation from the Director, that the BIC has not discussed as the entire Commission,” and she called it “a slap in the face to the rest of the Commission.” Commissioner Walker stated “this has been a process over the last few years of continued harassment from the Chair, not Commissioner McCarthy, but from the previous President of harassing the Director in public.” After meeting in closed session for an hour and a half, the BIC announced (1) that a majority of the BIC voted to “confirm the appointment by the Human Resources Director” of Vivian Day as a Special Assistant for transition purposes and (2) voted unanimously to appoint Tom Hui the Acting Director effective July 1, 2012.

On June 21, 2012, the San Francisco Examiner reported on Hui’s appointment as Acting Director in an article titled: “Speculation rife that DBI Director was ousted politically.” Exhibit 28.

2. In September 2013, the BIC Appointed Hui Permanent Director

In June 2013, a year after Hui became Acting Director, the Civil Grand Jury issued a report summarizing the many, documented, ethical issues at DBI going back to 2001, including favoritism and kickbacks, and the need to change the ethical culture. Exhibit 25 at p. 10. The report addressed “the fundamental issue of leadership, including the Mayor’s Office, which appoints a majority of the [BIC]; the BIC itself, which appoints the Director of DBI and establishes departmental policy; the DBI Director; and the different department heads who manage DBI’s operations.” Exhibit 25 at p. 6. The report made several findings paired with recommendations for reform, including a recommendation that the DBI Director conduct an ethical climate survey and use the results to identify areas where improved communication of ethical standards and monitoring of employee behavior were needed. Exhibit 25 at p. 7. DBI has no record of such a survey in response to the 2013 Civil Grand Jury report.

At its September 2013 meeting, the BIC appointed Hui permanent Director. DBI’s press release, announcing Hui’s permanent appointment touted his work on a Strategic Action Plan to address the findings in the civil grand jury’s report. A copy of that press release is attached as Exhibit 29. The press release states that one of the issues to be addressed in that Strategic Action Plan includes “the launching of a new and more effective Permit Tracking System.”

3. Callahan Said Hui Frequently Requested and Got Pay Raises

Callahan recalled that Tom Hui received a pay increase of about 15% when he was made Acting Director. When Hui was made permanent Director a year later, he wanted another 15% pay raise. Callahan remembered that Mayor Lee “loved him” and wanted to give Hui the raise, but Callahan did not think it was merited given that he had already received a large pay increase

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when he became Acting Director. Callahan remembered that Hui complained frequently to Mayor Ed Lee about his pay and was the highest paid Director in his classification.

Personnel records show that by July 1, 2015 – after the confidential GSA investigation discussed below – Hui became the highest paid department head in his class of 0964 Department Head III.

V. INVESTIGATIONS INTO 125 CROWN TERRACE REVEALED THAT DBI UNDER HUI TREATED MEL MURPHY WITH “KID GLOVES”

During Tom Hui’s tenure as DBI Director, the evidence showed that under his management and direction, when a political or powerful person needed a favor, DBI would comply. Whether it was turning a blind eye when policies were not followed, or taking a lax enforcement approach when certain projects of certain developers ran afoul of local and state building codes, former Director Hui’s DBI condoned unethical behavior by some within the department. Our investigation uncovered two examples of the influence and access some would enjoy under Hui.

A. DBI Approved Mel Murphy’s Proposed Project at 125 Crown Terrace in November 2012 – Five Months After Hui Became Acting Director

On October 6, 2011, while Day was still Director, DBI approved Mel Murphy’s site permit for 125 Crown Terrace. After Hui was made Acting Director, the permit application to build was reviewed by Robert Chun, who approved it on November 26, 2012. The permit was stamped approved on November 28, 2012 – five months after Hui became Acting Director. Chun, the assigned plan reviewer, reported to Deputy Director Ed Sweeney. As described below, the 2014 GSA Report found after-the-fact that Chun undervalued the cost of construction at 125 Crown Terrace, resulting in lower permit fees for Murphy. That permit is attached as Exhibit 30. It shows that the site permit was approved in October 2011 (while Day was still Director). The permit application also reveals that the applicant claimed the estimated cost was \$60,000 and that Chun’s first revised cost estimate was only \$300,000 (for a remodel on a slope in Twin Peaks that required Structural Advisory Committee (“SAC”) review). As described below, after the slide, Hanson Tom would recalculate the costs at more than \$1.5 million. The estimated cost of the project affects the cost of the permits.

Construction was held up for almost a year by appeals from neighbors. Murphy ultimately prevailed before the Board of Appeals, and Robert Chun again signed off on the final permit on September 24, 2013, with the same low cost of construction of only \$300,000. On October 8, 2013, after appeals and a second SAC review of the plan, DBI approved the permit for 125 Crown Terrace again.

On December 16, 2013, the house at 125 Crown Terrace slid off its shoring and down the hill. The house was stopped by an excavator parked at the bottom of the hill. Patrick O’Riordan – by then the Chief Building Inspector – was at 125 Crown Terrace the morning after the slide and issued the NOV and stop work order. The slide in December 2013 prompted an investigation into potential employee misconduct by the GSA, at Hui’s request.

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1. McCarthy Said Mayor Lee’s Chief of Staff Asked Him to Make Sure Hui Held Murphy Accountable for the Slide

When interviewed by the City Attorney’s Office on November 22, 2021, McCarthy said that he went to 125 Crown Terrace the morning after the slide in December 2013. He said he was shocked to see how serious it was. He also said he got a call that morning from Steve Kawa, former Mayor Lee’s Chief of Staff, asking him what happened and giving him clear instructions to make sure that DBI staff did their job. McCarthy said he believed that Kawa was tired of having Murphy around City Hall and that 125 Crown Terrace was the “final straw for Mr. Kawa.” McCarthy explained that he had observed Tom Hui and Mel Murphy together at a City Hall function, and they seemed “too pally for me.” At the same time, McCarthy said that BIC Commissioner Debra Walker was concerned that Tom Hui would give Murphy a “soft landing.”

2. Former Mayor Lee’s Administration Supported Hui’s Response to the Accident at 125 Crown Terrace

Internal correspondence within the City from late December through February 2014, in the weeks after the slide, show that Hui was in regular communication with then-BIC President Angus McCarthy and the Mayor’s Office (including Mayor Lee and his Chief of Staff, Steve Kawa) regarding DBI’s public response to the accident. Hui’s Communications Director, Bill Strawn, coordinated DBI’s response. Hui asked GSA Human Resources under City Administrator Naomi Kelly to conduct the employee investigation; Hui did not ask the City Attorney’s Office to investigate. Our review of Hui’s actions in the immediate aftermath of the slide show that Hui turned to executive branch departments under the auspices of former Mayor Ed Lee, City Administrator Naomi Kelly, and Public Works Director Mohammed Nuru, to assist managing every aspect of DBI’s response.

3. GSA Shared Confidential Personnel Findings with Hui and McCarthy on January 28, 2014

On January 28, 2014, Hui’s Communications Director, Bill Strawn, shared with a friend in email that Hui and McCarthy were at GSA being briefed on GSA’s employee investigation:

Tom [Hui] and Angus [McCarthy] are being briefed as I type by the HR investigator of the Mel Murphy house incident – to apprise them/DBI of whether or not they are recommending any staff disciplinary actions. Presumably any such recommendations would not be made public due to the personnel rules in play.

Exhibit 31. On January 30, 2014, GSA issued a confidential personnel report addressed to Hui. Exhibit 1. Later, on February 4, 2014, GSA issued a shorter public summary of its recommendations. Exhibit 2. The recommendations to DBI are the same in both versions. But the public report does not include information about mistakes made by DBI employees that resulted in lower permit fees for Murphy or the assignment of an out-of-district inspector at Murphy’s request, as described below.

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a. GSA Found Problems with DBI Permit Services (Plan Review) Supporting Discipline

The then-confidential GSA Report found just cause to discipline two former DBI employees in the Permit Services Division (Plan Review), including Robert Chun, for failure to exercise oversight and inattention to duty for significantly undervaluing the cost of construction at 125 Crown Terrace. The report found that Chun originally estimated costs at \$300,000, and that in December 2013, before the slide, Hui, Sweeney, and Lowrey met with Mel Murphy over coffee and alerted him to a complaint that would result in a correction notice estimating the costs at \$600,000. Later, after the slide, Hanson Tom would estimate the costs at more than \$1.5 million. The low estimate of construction costs by Chun had generated lower permitting fees for Murphy. The GSA Report found that Murphy’s low permit fees were the result of errors by lower level employees. It recommended the two employees be reprimanded and that DBI create a protocol for future cost estimations and implement “quality assurance/control to ensure that construction cost reductions are equitable and administered in accordance with the established policy or guidelines.” Exhibit 1 at 20.

b. GSA Found Fault with DBI Building Inspection Division (BID), including An Appearance of Favoritism, and Recommended DBI Implement an Inspector Assignment Wheel System

Although the GSA Report found no evidence of policy violations regarding the actual inspections at 125 Crown Terrace, it faulted DBI for failure to implement and maintain policies governing the assignment of inspections and the tracking of special inspections. Among other recommendations, the GSA Report recommended that the Director give a “warning” to the Deputy Director of Inspection Services Dan Lowrey for creating an appearance of favoritism. GSA found that Mel Murphy called Lowrey directly to ask him to send a specific inspector – not the assigned District Inspector, Chris Schroeder – to 125 Crown Terrace. GSA found that Lowrey obliged Murphy’s request without consulting O’Riordan (the Chief Building Inspector) or Curran (the assigned Senior Inspector). According to the GSA Report, Lowrey said that he also made the assignment without consulting Director Hui.

A San Francisco Chronicle staff writer emailed Tom Hui and others at DBI on December 20, 2013, asking why someone other than the District Inspector was at 125 Crown Terrace four times in 2013. O’Riordan responded: “I was not the person who assigned the inspector to perform these four inspections. It is best if you put this question to my Supervisor Daniel Lowrey.” Exhibit 32. Hui, Lowrey, Sweeney, and Strawn were all copied on O’Riordan’s response. In 2021, O’Riordan told investigators that after the GSA investigation was completed, Lowrey told O’Riordan that Hui had directed him to send the specific inspector to Murphy’s project. GSA recommended that DBI introduce an “inspector assignment wheel system” for last minute assignments on any given day to avoid the appearance of impropriety or favoritism in the future.

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c. GSA Stopped Short of Faulting Director Hui Despite Evidence That Hui Was Aware of the Improperly Low Permit Fees Before the Slide and Had Privately Discussed them with Murphy

GSA found that Mel Murphy sent a representative to DBI to pay increased permitting fees the afternoon of the day after 125 Crown Terrace slid down the hill. GSA asked then-Deputy Director of Permit Services Ed Sweeney how Mel Murphy knew about DBI’s revised construction cost estimate. According to the GSA Report, Sweeney said that he “thought it might have been discussed in a meeting over coffee with DBI Management and Mel Murphy” on December 11, 2013, after a memorial for Nelson Mandela.

GSA interviewed Tom Hui and asked *him* how Murphy knew that DBI was planning to revise the cost estimate from \$300,000 to \$610,500. The GSA Report provided:

Mr. Hui did state that DBI Management had coffee with Mr. Murphy after the Mandela Memorial. However, he stated that he did not remember any specifics of the meeting as it also included general discussion of other matters.

Exhibit 1 at p.13. Despite evidence of the private meeting over coffee, when discussing this meeting later in the report, GSA referred to Hui generically as part of “DBI Management” and made no findings about the propriety of that meeting or about Director Hui himself contributing to appearances of favoritism.

4. GSA Issued a Truncated Public Report of Recommendations With No Specific Findings of Wrongdoing on February 4, 2014

On February 4, 2014, GSA issued a short summary of recommendations to DBI from the longer January 30, 2014, GSA Report to Director Hui. GSA’s public report included separate findings and recommendations related to the plan review and inspections departments. For both sides of DBI, GSA’s public report stated only: “DBI and/or City and County policies were violated by some DBI personnel. As a result, the Department should take appropriate action.”

a. Hui Reprimanded – But did not Discipline or Demote – Three (now former) DBI Employees and Promised Stronger Policies and Training in the Future

As a result of GSA’s findings, Hui reprimanded three former DBI employees, including Chun (a permanent civil servant) and Lowrey (in a permanent exempt position). No one at DBI was disciplined or demoted. Chun and another plan reviewer involved in the original cost estimates were reprimanded for lack of oversight and inattention to duty. Lowrey was reprimanded for a lapse of judgment.

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5. DBI Issued a Public Report on February 5, 2014 Faulting Murphy and Santos for the Slide, but not Acknowledging DBI’s Role in Favoring Murphy by Assigning Requested Inspectors and Imposing Low Permit Fees

On February 5, 2014 (six days after the confidential GSA Report and the day after the public GSA Report), Hui issued a public report on behalf of DBI assessing the cause of the accident and explaining how DBI would respond. The “Chronology of Events” included in Hui’s report showed that on the morning after the slide and again three days after the slide he had briefed Mayor Lee in person on DBI’s action plan. Exhibit 3 at pp. 8-9. Hui’s public report accurately faulted Murphy and Santos for the accident.

But significantly it also minimized DBI’s complicity in the undervaluation of costs. Hui’s report did not address the “discrepancies” between DBI’s first (\$300,000), second (\$610,500), and third evaluations (\$1,500,000) by DBI plan reviewers of the costs submitted by the project sponsor. The DBI Report also noted that GSA had completed a personnel investigation and included a general reference about some DBI employees violating some City and DBI policies but did not share GSA’s specific findings about employee misconduct at DBI.

Hui’s correspondence leading up to the public issuance of the DBI Report shows that, through Strawn, he turned to Hanson Tom to assess the cause of the slide as well as the true cost of construction. Tom had been Hui’s supervisor until March 2012, when the BIC appointed Hui Deputy Director.

a. Hui Shared Internal DBI Drafts and Communications about 125 Crown Terrace with Engineer of Record Rodrigo Santos

Hui’s correspondence in the aftermath of the slide show that he regularly shared internal DBI communications about DBI’s discussion of 125 Crown Terrace with Rodrigo Santos, Mel Murphy’s engineer of record and a former BIC President himself. On December 29, 2013, Hui emailed Ed Sweeney (by then Deputy Director of Permit Services) and Hanson Tom (former Acting Deputy Director of Permit Services). Although addressed to both men, the body of the email instructed Hanson Tom to finalize a report of the owner’s mitigation and restoration plan by December 31, 2013. In the email Hui copied Angus McCarthy and blind copied Rodrigo Santos, suggesting a deliberate effort to hide the communication to Santos. Exhibit 33. In this way, Hui inappropriately previewed for Santos concerns about the inadequacy of both the prior cost estimates and Santos’ plans for restoration of the existing building materials.

On December 30, 2013, Hanson Tom sent Tom Hui and others a revised cost estimate for 125 Crown Terrace. Tom’s calculations increased the cost estimate from \$610,500 (the amount that Hui and his deputy directors had previewed with Mel Murphy over coffee after the Nelson Mandela memorial and before the slide) to \$1,550,000. Hui forwarded Tom’s email to Strawn with this request:

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Please ask Hanson [Tom] to review my Action Plan and emails. He is only forward [sic] the calculations only [sic] and no summary report through Ed.

Exhibit 34. Strawn forwarded Hui’s request to Tom with instructions to issue a correction notice for the revised cost calculations and to evaluate the “Santos Engineering Report.” Strawn said that Hanson Tom’s report was needed within 24 hours, explaining: “The mayor keeps requesting it from Tom [Hui], so please send me your draft by no later than noon tomorrow.” Exhibit 34 (emphasis added). Strawn further explained that, in addition to the Mayor, the BIC and the Acting Zoning Administrator at the Planning Department would need to see the updated valuations.

Hanson Tom responded directly to Tom Hui within the hour. Hanson Tom complained to Hui about the short turn-around time and expressed concerns about being made a “scape goat.” Exhibit 34. That same day, Hui forwarded Hanson Tom’s email to Angus McCarthy and again blind copied Rodrigo Santos, including Tom’s concerns about being scapegoated. Inexplicably, Hui also shared an email from Hanson Tom to his son, Jason Hui. Exhibit 35.

As Strawn had requested, the next day, on December 31, 2013, Hanson Tom emailed a draft evaluation of Rodrigo Santos’ engineering report – clearly labeled “Draft!!!” – to Hui and others at DBI. Tom’s draft assessment of Santos’ report was littered with sentences ending in exclamation points. Within minutes, Hui forwarded the draft evaluation report to Rodrigo Santos. Exhibit 36.

On January 6, 2014, Commissioner Walker emailed Tom Hui and Angus McCarthy five questions about the building collapse at 125 Crown Terrace. The next day, Hui forwarded her email to Rodrigo Santos and asked: “Hi Mr. Santos, Please, help me answer Debra’s questions. Thanks, Tom.” Exhibit 37.

b. BIC President McCarthy Shared Draft DBI Report on Crown Terrace with the RBA’s President

On January 9, 2014, Bill Strawn sent Director Hui and BIC President Angus McCarthy a draft DBI Report regarding the cause of the slide and DBI’s proposed response. Exhibit 38. When we interviewed him on November 22, 2021 as part of this investigation, McCarthy said that when he first read DBI’s draft report on the cause of the slide at 125 Crown Terrace he was shocked. First, he explained, he was surprised that the report was coming from a communications person rather than an engineer. Second, he explained, he was furious that the draft was going to blame the failure of the house coming down the hill on a steel beam from China without holding the contractor (Murphy) and engineer of record (Santos) accountable. McCarthy responded to Strawn within two hours with revisions to the report that laid blame more clearly on Murphy, the contractor of record.

The email string on January 9, 2014, shows that McCarthy forwarded the draft to Sean Keighran of the RBA before responding to Strawn. Providing an advance draft to Keighran created the

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appearance of insider access. Our investigators asked McCarthy why he forwarded the draft DBI Report to Keighran. McCarthy explained that he has dyslexia (as he disclosed in McCarthy’s public response to the Mission Local September 2021 article), that Keighran is his closest friend, and that he relies on Keighran to assist him with drafting written documents. He went to Keighran’s office and dictated revisions to the draft report that clarified that the “real reason that house came down the hill was because it was shabby and dangerous construction work by the ownership of the property, and not because of a goddamn steel beam from China.” McCarthy was concerned about the tone of the draft DBI Report characterizing the incident as a “big accident” and “hard luck.” According to McCarthy, the DBI Report was an important document that had to go to the Mayor’s Office for review.

McCarthy told investigators that he and Mel Murphy never liked each other and was adamant that Murphy was never a member of the RBA. According to McCarthy, Murphy was “quite controversial,” because he acted like there were two sets of rules, one for him and another for everyone else. McCarthy said that he told Mayor Lee that Murphy at the time was not representative of the building community and did not deserve to be sitting on the BIC. McCarthy believed that it was a “well-shared feeling” that Murphy was not qualified to sit on the BIC even before 125 Crown Terrace slid down the hill, because Murphy’s refusal to follow the rules made things harder for other builders.

McCarthy said that he underestimated Mayor Lee’s loyalty to Mel Murphy. McCarthy said he would tell the Mayor: “Why do you keep this guy around? I mean I wouldn’t expect you to keep me around if I was embarrassing you like this, Mayor.”

6. The City Attorney’s Office Investigated Separately and Sued Mel Murphy in 2015 for Code Violations and Unfair and Unlawful Business Practices at 125 Crown Terrace and Other Properties

The morning after the slide, the City Attorney’s Office initiated its own investigation into the cause of the accident. On April 1, 2015, the City Attorney’s Office sued Mel Murphy for code violations at a number of his properties, including 125 Crown Terrace. On July 28, 2015, the City Attorney filed a first amended complaint against Murphy. A copy of the first amended complaint is attached as Exhibit 39. Murphy’s settlement of that lawsuit with the City in 2018 required him to make a settlement payment of \$225,000 and to enter a stipulated injunction governing two properties that were still not Code compliant. By the time of the settlement in 2018, 125 Crown Terrace, as well as the 26th Street Project, complied with the Building Code.

B. Following the GSA Report Recommendation for an Inspector Assignment Wheel System, Hui Tasked Lowrey and O’Riordan with Implementing their Recommendation – O’Riordan Did the Heavy Lifting

On January 27, 2014, three days before receiving GSA’s recommendations, Hui, through Strawn, tasked Deputy Director Dan Lowrey and then-Chief Building Inspector Patrick O’Riordan with proposing a policy for assigning Inspectors when the District Inspector was unavailable. Exhibits 40-41.

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That same day O’Riordan sent Strawn a proposal. O’Riordan listed seven criteria in order of priority for providing coverage. Strawn pushed to add an eighth criteria allowing the Deputy Director to make assignments. Strawn suggested that O’Riordan add: “As assigned by Deputy Director of Inspection Services.” O’Riordan resisted, saying:

I’m not sure why you added a number 8 in the prioritization of who does inspections. I think this is exactly what we are trying to avoid saying.

Exhibits 40-41. Director Hui, Deputy Director Sweeney, Deputy Director Lowrey, and others, were copied on the communications between O’Riordan and Strawn. Strawn deferred to O’Riordan and DBI did not include discretion for the Deputy Director to make assignments (as Lowrey had done at 125 Crown Terrace) in the final policy. But as described below, Hui himself continued to direct former Senior Inspector Bernie Curran to specific projects without going through O’Riordan, his Chief Building Inspector.

Later in April 2014, after GSA publicly recommended an inspection assignment wheel, O’Riordan also prepared a wheel, as a visual prompt for the order of priority in assigning inspections when the assigned District Inspector was unavailable. Exhibit 42.

1. O’Riordan Attempted to Enforce the Revised Assignment Policy

In the years after the 125 Crown Terrace building slide, O’Riordan, as Chief Building Inspector, took steps to educate his staff about how to enforce the inspection assignment wheel. But, as described below, those efforts were undermined in practice by Director Hui and his Deputy Directors. At a staff meeting in January 2018, O’Riordan re-distributed the inspection assignment wheel along with a meeting agenda. In the January 11, 2018, meeting agenda, O’Riordan reminded staff of the policy mandating that Inspectors remain in their assigned districts absent supervisor approval:

Districts – Building Inspectors are regularly asked by Seniors to assist in coverage of Districts. This is due to District Building Inspector not being available or busy. Please understand that these assignments and reassignments are the responsibility of a Supervisor. The Building Inspector may not conduct inspections outside of their assigned District without first informing a Supervisor.

Exhibit 43.

2. Curran Ignored O’Riordan’s Instructions about Assignments and Instead Continued to Perform Out-of-District Inspections at Hui’s Direction, and also Sometimes in Exchange for Bribes

In 2019, O’Riordan learned that Senior Inspector Bernie Curran had conducted inspections at 2867 San Bruno (the “San Bruno Project”). O’Riordan discovered Curran’s problematic inspections in January 2019 after a joint inspection by DBI and Planning at the San Bruno Project identified more than 20 unpermitted units at the multi-address project. The higher

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occupancy increased Building Code requirements for fire safety and accessibility. The City Attorney’s Office settled with the developer in advance of litigation for \$1.2 million in June 2021.

In a compelled interview with our investigators directed by Interim Director O’Riordan in 2020, Curran claimed that the unpermitted units were not present when he inspected. But Curran acknowledged that after the additional units were discovered in January 2019, O’Riordan admonished him to stay in his district.

Curran initially told investigators that he stopped going outside his districts after that instruction from O’Riordan. But when confronted with out-of-district inspections he conducted *after* the San Bruno Project, Curran conceded that O’Riordan “[q]uite possibly, yeah” might be upset and view his later out-of-district inspections as Curran not listening to him.

In a follow-up compelled interview with our investigators in May 2021, Curran admitted that he viewed O’Riordan as “irrelevant.” Curran said that he had been told by then-Director Tom Hui and his Deputy Directors for Permit Services and Inspection Services that Senior Inspectors could inspect anywhere in the City. Curran said: “[S]o I had three people above Pat [O’Riordan] telling me something contrary, and I took it as Pat just being a burr in my backside because we had different personalities.”

Curran told investigators that then-Director Hui sent him to the San Bruno Project. As described below, he told O’Riordan the same thing the year before.

3. In 2019, O’Riordan Alerted the City Attorney’s Office After Learning of Hui’s Role in Directing Curran to the San Bruno Project

At a Land Use and Transportation Committee meeting on September 13, 2021, Board of Supervisors members questioned O’Riordan publicly about the San Bruno Project. In that meeting he stated that Curran told him the additional, unpermitted units must have been created after his final inspection. O’Riordan also stated that Curran told him that then-Director Hui sent him to do the inspections at the San Bruno Project. (DBI also publicly reported Curran’s representation in an August 19, 2021 staff report to the BIC about the San Bruno Project. Exhibit 44 at p. 3.) O’Riordan said: “I was outraged and reported it immediately.” When asked to whom he reported it, O’Riordan stated that he was communicating with the City Attorney’s Office as part of its investigation into the San Bruno Project.

4. In 2021, O’Riordan Told Investigators He Felt “Hamstrung” to Supervise Curran Under Director Hui’s Tenure

After allegations against Hui were included in the criminal complaint charging Mohammed Nuru, O’Riordan voluntarily agreed to be interviewed by our investigators in November 2020. We questioned O’Riordan about 555 Fulton Street, the San Bruno Project, and what he knew about favoritism and corruption at DBI. O’Riordan told our investigators that Hui would spend a lot of time with Curran in the mornings. He said they would talk about jobs. O’Riordan said

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they would be out of earshot, and if he came within earshot, their volume would go way down. O’Riordan said it was difficult for him to supervise Curran, because Curran was closer to both Ed Sweeney and Tom Hui than he was, and they were his bosses. O’Riordan shared that a lot of problems at projects would later come to have “Bernie’s name on them,” and O’Riordan shared some addresses for further investigation.

O’Riordan said that he instructed Curran several times to stay in his districts. He also said he spoke to Deputy Director Ed Sweeney about Curran several times between 2018 and 2019. He said that Sweeney would just encourage him to talk with Curran. O’Riordan said that Curran always had believable reasons for what he had done and that Curran could “really spin the story.” O’Riordan explained that “we make sure that people get their inspections, but obviously, we want to make sure that it’s done in a proper way, or I do.” O’Riordan said he was astounded when, in 2020, he saw the PTS data summarizing the volume of Curran’s out-of-district inspections.

O’Riordan said he felt “hamstrung” to deal with Curran and feared retaliation. He said that a few years after his promotion to Chief Building Inspector he began to hear rumors that Hui wanted Curran to get certifications that would have made him eligible to be Chief Building Inspector.

C. Despite The Confidential 2014 GSA Report about 125 Crown Terrace and other Evidence of Favoritism from that Time, DBI’s Treatment Of 555 Fulton Illustrates That Favoritism At DBI Persisted

In late January 2020, the federal government made public criminal charges against Mohammed Nuru, implicating Tom Hui as “DBI Official 1.” The criminal complaint included allegations that Walter Wong and the developer for 555 Fulton Street took Hui and Nuru to dinner to discuss that project. On February 4, 2020, the City Attorney and the Controller issued a statement announcing the contours of their joint public integrity investigation. In that joint press release, the Controller’s Office publicized an anonymous public integrity tip line.

The same day the tip-line was announced, someone reported that Hui had pressured Robert Chun to assign the plan review of 555 Fulton Street (where Walter Wong was the permit expeditor) to Cyril Yu to expedite. The tip-line reporter shared screen shots of the PTS and represented that Yu had approved the plans in a single day on July 14, 2014, the Monday after the Friday that Chun had assigned it to him for review. This alleged conduct occurred just six months after GSA’s confidential personnel report to Hui found that Chun had made mistakes in favor of Mel Murphy’s project at 125 Crown Terrace.

1. Background on the Joint Investigation in 2020 into Hui and Walter Wong at 555 Fulton Street, Hui’s Resignation, and O’Riordan’s Appointment as Interim Director

On February 18, 2020, our investigators interviewed Hui at his office and he admitted to accepting meals from Walter Wong and the developer of 555 Fulton Street as alleged in the

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complaint against Nuru. On February 27, 2020, the City Attorney issued a number of subpoenas to entities connected to 555 Fulton Street, including entities controlled by Walter Wong.

On March 10, 2020, the City Attorney sent a memorandum to Mayor London Breed outlining the Office’s preliminary findings that Hui had accepted meals from the developers of 555 Fulton Street, including Walter Wong, and that Hui had provided preferential treatment and abused his official position. In that public report this Office found that Hui had provided Walter Wong with unprecedented access to internal DBI business and to Hui himself in violation of DBI’s Code of Conduct. Hui’s sharing of materials with Wong included the sharing of policy drafts that Hui was working on for Mayor Lee’s office. Exhibit 45 at p. 7 and 53-57.

The City Attorney did not mark the report as privileged or confidential “[i]n the interest of public transparency, and given the high rank of the official involved and the misconduct described.” A copy of that report is attached as Exhibit 45.

The same day that Mayor Breed received our Office’s March 10, 2020, Report, she placed Hui on administrative leave and called on the BIC to remove him as Director. Hui resigned a week later, before the BIC met to consider his removal.

On March 12, 2020, the City Attorney’s Office filed an amended complaint against former BIC President Rodrigo Santos adding allegations of check fraud. The City Attorney first sued Santos back in September 2018 for construction work beyond the scope of approved permits that undermined the foundations of neighboring homes. The City’s lawsuit against Santos is now stayed pending the resolution of a criminal bribery case against Santos and Curran.

On March 16, 2020, San Francisco and six other Bay Area jurisdictions imposed a shelter-in-place order in response to COVID-19. On March 18, 2020, in the midst of the burgeoning pandemic, the BIC appointed Patrick O’Riordan as Interim Director of DBI. At that time, O’Riordan was a Chief Building Inspector reporting to Deputy Director of Inspection Services Ed Sweeney. The BIC passed over Hui’s Deputy Directors for the interim position.

In July of 2020, at the City Attorney’s request, O’Riordan compelled each of DBI’s Deputy Directors to an interview. O’Riordan also directed Cyril Yu and Bernie Curran to interviews. Since then, all but one Deputy Director who served under Hui has retired. In addition, Yu, Curran, and Chun have all resigned.

In a compelled interview with Cyril Yu in August 2020, Yu said that he was an associate engineer in Plan Review who reported to Robert Chun. Yu said that one engineer was in charge of assigning site permits, and Chun was in charge of assigning full permits. Yu explained that full permits included the complete set of drawings, including architectural drawings, structural drawings, mechanical, electrical, and plumbing. Yu confirmed that Chun assigned him the 555 Fulton permit to review and told him to prioritize it. After taking extended leave, Yu left DBI in late March 2021.

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Our investigation revealed that, on October 24, 2014, Robert Chun had been indicted by a federal grand jury for his role in a prostitution ring. No other City employees were charged. Exhibit 46. Chun’s prostitution case was “terminated” on January 21, 2020. Although much of the docket in Chun’s case remains under seal, it appears that he was sentenced to five years of probation on January 21, 2020.

Shortly after being appointed as Interim Director, based on the criminal allegations involving 555 Fulton Street, O’Riordan initiated a full staff review of the permitting review and inspections there to ensure the building was safe. The review found that the permit fees imposed were too low, and DBI issued a correction notice. On August 30, 2021, the developer paid the revised permit fees.

2. Ongoing Joint Public Integrity Investigation by this Office and the Controller, with Cooperation from Interim Director O’Riordan, Results in Findings of Corruption by Curran, Actions against Wong, and Findings of Favoritism in the September 2021 Controller’s Report

Based on the City Attorney’s Office’s investigation into Curran’s same-day and out-of-district inspections, O’Riordan placed Curran on paid administrative leave effective May 20, 2021. Our investigation uncovered public records of a loan from Freydoon Ghassemzadeh to Curran and that Curran had inspected properties owned in part by Ghassemzadeh. Freydoon Ghassemzadeh’s son, Bahman Ghassemzadeh, was on the BIC Board of Examiners at the time of his father’s loan to Curran. On June 8, 2021, the San Francisco Chronicle reported the Ghassemzadeh loan to Curran, and Bahman Ghassemzadeh resigned from the Board of Examiners on June 9, 2021.

Former BIC President Rodrigo Santos and former Senior Building Inspector Bernie Curran were criminally charged with bribery on August 20, 2021.

On September 14, 2021, the Board of Supervisors approved a settlement the City Attorney’s Office negotiated with Walter Wong that included ethics fines paid by Wong for the complimentary meals he provided Nuru and Hui to discuss 555 Fulton Street.

On September 16, 2021, the Controller’s Office issued the Controller’s Report detailing its findings with respect to favoritism in permitting and inspections at DBI. O’Riordan and his executive team fully cooperated in the investigation leading up to the Controller’s Report and shared their internal findings about 555 Fulton Street, the San Bruno Project, and Bernie Curran’s internal inspection histories. The Controller’s Report made a number of recommendations to address issues raised by the federal complaint, the City Attorney’s investigation, and findings of wrongdoing by former employees. Exhibit 18 at p. 19. It also acknowledged the reforms already initiated by O’Riordan as Interim Director. Exhibit 18 at p. 19.

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3. Findings in the Controller’s Report Confirm that Hui Adopted Recommendations for Ethical Reform “On Paper” Only

The Controller’s Report included findings from DBI’s staff review of 555 Fulton Street, as well as findings from the City Attorney’s investigation into the addition of illegal units at the San Bruno Project.

The Controller’s Report concluded that:

On paper, DBI’s code of conduct and policies and procedures are strong. Nevertheless, significant ethical violations occurred at DBI because Mr. Hui and his former leadership staff did not effectively implement these standards. Evidence further indicates that Mr. Hui provided improper preferential treatment to permit sponsors he favored by assigning certain inspectors to inspect their buildings (for example, Mr. Curran at the San Bruno properties), where violations would be overlooked.

Exhibit 18 at p. 15. As the GSA Report did in 2014, the Controller recommended that DBI implement supervisory quality assurance reviews of senior plan reviewers and senior inspectors’ work. That the Controller’s Report found the same control weaknesses at DBI seven years after the 125 Crown Terrace findings and GSA Report recommendations for such controls demonstrates that Hui was never committed to implementing the recommended changes to combat favoritism.

4. After 125 Crown Terrace, DBI Plan Reviewers Repeated the Same Mistakes at 555 Fulton Street, where Politically Connected Walter Wong Was Permit Expediter

DBI’s staff review in 2020 and 2021 identified irregularities in the plan review of 555 Fulton Street in the (1) assessment of fees, (2) expedited plan review (bumping 555 Fulton to the front of the line), and (3) abbreviated or cursory plan review (less than one hour instead of 40 hours of review). As described in the Controller’s Report, plan review for 555 Fulton gave rise to appearances of improper preferential treatment in at least four areas:

Shoring plan review began immediately. The review of the plans for the shoring permit application was greatly expedited; the assigned senior plan reviewer began reviewing the plans immediately after they were submitted. According to DBI, plan reviewers usually start a review a month or so after it is assigned to them.

Shoring plan review was unusually quick. The shoring plans were reviewed and approved in less than a day. In contrast, an experienced DBI employee estimated that a review of this size and complexity would take at least three or four days.

Inaccurately low construction cost estimate caused the applicant to be undercharged. The estimated cost for the proposed shoring work

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recorded for the permit was \$1.1 million less than it should have been per the DBI Cost Schedule. This discrepancy reduced the permit fee the applicant paid by approximately \$9,300.

No quality assurance review of the shoring permit. The review that led to the approval of the shoring permit for 555 Fulton was not subject to a quality control review because it was performed by a senior plan reviewer rather than a plan reviewer.

Exhibit 18 at p. 29. The Controller’s Report notes that no one who reviewed the shoring permit application for 555 Fulton or any superior in their chain of command (this includes Hui, Lowrey, Chun, and Yu) is still employed by DBI.

5. The Controller’s Report Found that Hui and Former BIC Presidents Santos and Murphy Fostered an Unethical Tone at the Top of DBI

The Controller’s Report also recommended that the BIC work with DBI to ensure an ethical tone from the top. Exhibit 18 at p. 48. It emphasized the importance of “Tone at the Top” for any organization, and it found that DBI’s leadership under Tom Hui and former BIC Presidents Mel Murphy and Rodrigo Santos fostered an unethical tone at the top by tolerating and promoting improper preferential treatment at DBI at 555 Fulton Street and the San Bruno Project. The Controller’s Office did not have the benefit of the confidential GSA Report from January 2014 in assessing the role that current BIC President Angus McCarthy and Mayor Lee’s administration played in fostering that unethical tone from the top. It nevertheless noted that the November 2020 criminal complaint against Harlan Kelly, the former General Manager of the SFPUC, alleged that Walter Wong was a close friend and supporter of Mayor Lee. Exhibit 18 at p. 9. That complaint describes text exchanges between Wong and Harlan Kelly that suggest a close relationship between Wong and Mayor Lee. That criminal complaint is attached as Exhibit 47. The Controller’s Report concluded that Hui may have felt pressure from former Mayor Lee to provide favors and accept meals from Walter Wong to protect his job. Exhibit 18 at p. 16.

6. In October 2021, DBI Publicly Shared Details about a Public Integrity Audit of Projects Involving Santos and Curran, Both of Whom Have Been Federally Indicted on Charges of Corruption at DBI

At the October 20, 2021, BIC meeting, DBI staff outlined the parameters of an internal audit to identify Building Code violations resulting from historical corruption. DBI is developing audit criteria in consultation with the City Attorney’s Office. DBI’s presentation to the BIC is attached as Exhibit 48. As it explained to the BIC, DBI will first focus on reviewing projects: (1) at addresses where Rodrigo Santos or a related entity did work; and (2) at addresses where former Senior Inspector Bernie Curran conducted a same day inspection. The total number of properties captured using these criteria exceeds 5,000.

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VI. CONCLUSION

As more described above, in this investigation we found no credible evidence that O’Riordan provided preferential treatment or otherwise acted inappropriately in connection with the Projects, or the other DBI construction projects we have reviewed. Indeed, there is evidence that following the GSA Report in 2014, O’Riordan sought to implement recommended reforms but those efforts were not supported by DBI leadership, including former Director Tom Hui. And, while the evidence shows no favoritism or selective enforcement by O’Riordan at the Projects or other projects we reviewed, the information we identify in this report from records we examined and interviews we conducted shows a clear historical pattern of preferential treatment and selective enforcement under former DBI leadership and by specific former inspectors and other DBI employees. Those practices benefitted influential and politically connected individuals whose projects or work was subject to DBI review and approval. The practices included expedited reviews and approvals, favorable but unsupported decisions on permits, access to internal or preliminary DBI information and decisions, and preferential access to DBI leaders.