



DENNIS J. HERRERA
City Attorney

MEMORANDUM

TO: Mayor London N. Breed
FROM: Dennis J. Herrera *DJH*
City Attorney
DATE: March 10, 2020
RE: Mohammed Nuru Federal Complaint Investigation—Tom Hui, Director of Building Inspection

I am transmitting to you a report from my Office summarizing preliminary findings from our ongoing investigation of alleged misconduct by Tom Hui, Director of the Department of Building Inspection ("DBI"). That investigation stems from the broader investigation we undertook into matters relating to the federal complaint against Mohammed Nuru. We conducted a voluntary interview of Hui on February 18, 2020, reviewed an initial set of records Hui voluntarily provided after that interview, and reviewed records obtained from other sources. We scheduled Hui to attend a second day of his interview on Monday, March 9, but on Sunday, March 8 his newly engaged criminal defense attorney requested to postpone the interview. It is unclear when or whether Hui may be available for a further interview. Therefore, I determined it is appropriate to summarize our preliminary findings based on the investigation to date and to give them to you so you could take appropriate employment action regarding Hui. In the interest of public transparency, and given the high rank of the official involved and the misconduct described, we did not mark the report as privileged or confidential.

In sum, based on Hui's admissions during the interview and other evidence we obtained through the investigation, we determined that Hui:

- Is "DBI OFFICIAL 1" described in the unsealed federal criminal complaint against Mohammed Nuru, Complaint 3-20-70028, filed January 15, 2020, in the Northern District of California;
- Violated the City's Campaign and Governmental Conduct Code ("CGCC") and DBI's Code of Professional Conduct by providing intentional preferential treatment and access to Walter Wong, a permit expeditor who regularly conducted business with DBI, and Zhang Li, the developer of a project subject to DBI jurisdiction;
- Violated the CGCC and DBI's Code of Professional Conduct by accepting gifts of dinners from either Wong or Zhang with the dinners arranged for the purpose of discussing Zhang's development project; and
- Violated City laws and policies by abusing his official position in seeking to influence City employment decisions related to his son and his son's girlfriend.



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TO: Dennis J. Herrera, City Attorney
Jesse Smith, Chief Assistant City Attorney

FROM: Keslie Stewart, Head Attorney for Public Integrity
George C. Cothran, Chief of Investigations

DATE: March 10, 2020

RE: Investigation of Tom Hui, Director of the Department of Building Inspection

I. SUMMARY OF INVESTIGATION AND INVESTIGATIVE FINDINGS

This report summarizes preliminary investigative findings from the City Attorney's investigation of alleged misconduct by Tom Hui, Director of Building Inspection.

In late January of this year, the City and County of San Francisco (the "City") and the public learned that federal prosecutors had charged Mohammed Nuru, the former Director of the Department of Public Works ("Public Works"), with alleged corruption in City contracting and permitting. In the unsealed federal criminal Complaint 3-20-70028, filed January 15, 2020, in the Northern District of California (the "Federal Complaint"), the U.S. Attorney's Office alleged that Nuru used his official position to benefit the developer of a mixed-use project in San Francisco in exchange for personal gifts and benefits.

The factual allegations in the Federal Complaint, together with publicly available documents, indicate: (1) the mixed-use project referenced in the Federal Complaint is 555 Fulton Street in San Francisco (the "Project"); (2) the developer of the Project is an entity owned and controlled by Zhang Li, a wealthy Chinese national; and (3) Walter Wong, a permit expeditor who regularly works on projects regulated by the Department of Building Inspection ("DBI") and Public Works, provided support for the Project through his company, Jaidin Consulting Group.

In the Federal Complaint, the U.S. Attorney's Office alleges that a DBI official agreed to attend a dinner with "DEVELOPER 1" (determined to be Zhang Li), "CONTRACTOR 2" (determined to be Wong), and Nuru in February 2019:

A search of communications in NURU's personal email account also indicates he remained involved in moving DEVELOPER 1's project forward, both before and after his trip to China. These communications include: . . . (ii) a February 9, 2019, email from the personal email address of DBI OFFICIAL 1 to CONTRACTOR 2, cc to NURU's personal email address, indicating that the official would attend a dinner with DEVELOPER 1 at a San Francisco restaurant later that month.

Federal Complaint, at ¶ 149.

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We determined that Hui is "DBI OFFICIAL 1" referenced in that Federal Complaint. On February 18, 2020, we interviewed Hui. He appeared at our request, without representation. Hui understood that his participation in the interview was voluntary and not covered by any privilege. We also reviewed an initial set of records Hui voluntarily provided after that interview and records obtained from other sources. We scheduled Hui to attend a second day of his interview on Monday, March 9, but on Sunday, March 8, his newly engaged criminal defense attorney asked to postpone the interview. It is unclear when or whether Hui may be available for a further interview. Therefore, we determined it is appropriate to present our preliminary findings based on the investigation to date.

Based on Hui's admissions during the interview and other evidence we obtained through the investigation, we determined that Hui:

- Is "DBI OFFICIAL 1" described in the Federal Complaint;
- Violated the City's Campaign and Governmental Conduct Code ("CGCC") and DBI's Code of Professional Conduct by providing intentional preferential treatment and access to Walter Wong, a permit expeditor who regularly conducted business with DBI, and Zhang Li, whose Project was subject to DBI regulation;
- Violated the CGCC and DBI's Code of Professional Conduct by accepting gifts of dinners from either Wong or Zhang Li, with the dinners arranged for the purpose of discussing the Project; and
- Violated City laws and policies by abusing his position in seeking to influence City employment decisions related to his son and his son's girlfriend.

II. APPLICABLE LAW AND POLICY

A. San Francisco Campaign and Governmental Conduct Code ("CGCC")

1. Fairness and Transparency in Permitting

The City has implemented laws specifically intended to bring "greater transparency to the City and County's permitting process." CGCC § 3.400 *et seq.* In doing so, the City specifically found that such transparency "is essential to protect public confidence in the fairness and impartiality of that process." CGCC § 3.400A. The CGCC requires equal treatment of permit applicants by officers and employees of DBI and Public Works. Intentional preferential treatment of any permit applicant and/or the applicant's representatives "shall subject the officer or employee to disciplinary action for official misconduct." CGCC § 3.400(a).

2. Prohibition on Bribery and Gifts from Restricted Sources

The CGCC prohibits bribes, and further provides that no officer or employee shall accept any gift "with the intent that the City officer or employee will be influenced thereby in the performance of any official act." CGCC § 3.216(a). In addition to the gift limits and reporting requirements imposed by State and local law, City officers and employees are prohibited from accepting gifts from restricted sources. CGCC § 3.216(b). A "restricted source" is any person doing business or seeking to do business with the department of the officer or employee. A "restricted source" is also any person who during the prior year has knowingly attempted to

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influence the officer in any administrative action. CGCC § 3.216(b)(1). In practice, this means that no employee may accept any gift worth more than \$25 from a restricted source. Ethics Commission Regulation 3.216(b)-5(a).

3. Fairness and Transparency in Hiring

City officials and employees are prohibited from seeking “to influence a decision of the City and County regarding an employment action involving a relative.” CGCC § 3.212(a). Relative is defined to include a child. CGCC § 3.212(c). A knowing or willful violation of this prohibition is a crime. CGCC § 3.242(a). Violations can also be enforced civilly and administratively. CGCC § 3.242 (b) and (d).

B. City Employee Handbook

The Employee Handbook reiterates the rules prohibiting nepotism in connection with City employment: “you may not . . . seek to influence any employment decision involving a person with whom you have a familial or romantic relationship.” Handbook at p. 45. The Handbook holds supervisors and managers to an even higher standard:

Supervisors and managers should avoid any appearance of favoritism or nepotism in the workplace.

Id. (Emphasis added).

The Handbook requires City employees “to adhere to the highest level of ethical standards.” *Id.* The Handbook summarizes key ethical obligations, including: “You may not accept any compensation, reward, or gift from any source except the City for any service, advice, assistance or other matter related to your City Job.” *Id.* at p. 45.

The Handbook refers employees to the Ethics Commission and City Attorney’s Office websites for additional materials about applicable ethical obligations, and it refers employees to the Ethics Commission with questions about these rules or other improper government activity. *Id.* at p. 46.

C. San Francisco Civil Service Rules and Merit System Principles

San Francisco operates on a merit system where there is no place for nepotism or favoritism.

The principles of the City and County’s merit system include:

- 1) Recruitment, employment, retention, and promotion of employees on the basis of qualifications and performance; and,
- 2) High performance and ethical standards, consistent with hiring qualified individuals who have successfully completed the examination process, been placed on an eligible list and completed the probationary period.

Further, it is the goal and policy of the Civil Service Commission to provide fair treatment of applicants in all aspects of employment without regard to race, religion, national origin, ethnicity, age, disability, gender

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identity, political affiliation, sexual orientation, ancestry, marital or domestic partnership status, parental status, color, medical condition, and otherwise prohibited nepotism or favoritism.

Rule 101.3 Merit System Principles (emphasis added).

D. DBI Policy

1. DBI Statement of Incompatible Activities

DBI's Statement of Incompatible Activities, required by the CGCC, provides that officers and employees are subject to DBI policies as well as State and local laws and rules governing the conduct of public officers and employees. DBI's Statement of Incompatible Activities specifically incorporates the CGCC, applicable Civil Service Rules, and DBI's Code of Professional Conduct, discussed below.

In addition to the gift limits imposed by State and City laws, the DBI Statement of Incompatible Activities "imposes additional limits by prohibiting an officer or employee from accepting any gift that is given in exchange for doing the officer's or employee's City job." Gifts, other than cash, with an aggregate value of \$25 or less per occasion are de minimis and therefore exempt from the restrictions on gifts imposed by the SIA.

2. DBI Code of Professional Conduct

In 2009, DBI implemented a Code of Professional Conduct that is still in effect. That Code of Professional Conduct is attached to this Memorandum as Exhibit 1. Former DBI Director Vivian Day included an Introduction that affirm that government service is a position of trust. She acknowledged that DBI had been criticized in the past, and stated: "The reality is that we need to be above reproach – and this Professional Conduct Manual is designed to help ensure that we achieve this result individually and collectively." Exhibit 1 at p. 2. DBI's Code of Professional Conduct requires employees to act with integrity, to conduct official business honestly, and to treat the public fairly. *Id.* at p. 4. Fairness is defined:

Employees will enforce compliance with building codes equally and neutrally for all customers, without consideration of any relationship, special interest, political association, other affiliation or lack thereof.

Id. at p. 5. Integrity is emphasized:

Employees will demonstrate the highest standards of personal integrity in order to inspire public confidence and trust in City employees.

Id. at p. 5. The Code explicitly provides that employees will not accept any gift, special favor, privilege, or benefit from a person or business that is: (1) regulated by the department, (2) doing business with the department, or (3) seeking to do business with the department – unless consistent with State and City law.

DBI's Code of Professional Conduct prohibits preferential treatment. "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." *Id.* at p. 11 (emphasis

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added). The DBI Code of Professional Conduct requires DBI employees to document and report to a supervisor or manager if they are asked to do anything they believe to be illegal or improper. *Id.* The Code recognizes the importance of preserving public trust, especially around gifts and favors, providing:

Public perception of conflict of interest may be stricter than City policy, and subject to disclosure and interpretation by public and press opinions.

Id. at p. 14.

To combat appearances of impropriety, DBI's Code of Professional Conduct asks employees to think twice before accepting a cup of coffee:

Simply put, while management discourages employees from accepting gifts from customers, expeditors, contractors, etc. we recognize there may be occasions where gifts are routinely exchanged. So long as gifts are within the legal limits . . . and PROPERLY REPORTED, there is not a complete prohibition on the acceptance of gifts. Something as simple as a cup of coffee may be accepted.

Id. at p. 33 (emphasis in original). It also directs employees to report ethical concerns to gradually higher levels of management, including the Director. *Id.* at p. 7.

III. FINDINGS AND ANALYSIS

A. Background on Hui's City Employment

Hui has worked at DBI since 1989. By 2000, he was a Building Plans Engineer. He became Deputy Director in 2012 and Mayor Lee appointed him as Director of DBI in September 2013.

B. Hui Provided Intentional Preferential Treatment of Wong and Zhang Li in Violation of CGCC and DBI's Code of Professional Conduct

1. Hui Accepted Meals from Restricted Sources to Discuss the Project Subject to DBI Review in a Private Setting

When asked about the identity of the "DBI OFFICIAL 1" referenced in the Federal Complaint, Hui said it "sounds like me." He also reviewed paragraph 149 of the Federal Complaint, quoted at the beginning of this memorandum, and admitted that he corresponded with Wong and Nuru on his personal email address about dinner invitations from Wong.

According to Hui, he did not socialize with Wong, but he admitted that he attended three to four dinners with Zhang Li, Wong, and Nuru where they discussed the Project. Hui received an email at his personal email address from Wong, inviting him to the dinner in February last year. Hui admitted the dinners were arranged to discuss the Project and that Zhang Li asked him questions about the Project during the meals. Hui claims that he told Zhang Li, "We cannot do anything." Zhang Li's questions about the project, in Wong's presence, made them both restricted sources for Hui, regardless of Hui's response.

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Hui said they ate at the R&G Lounge in Chinatown in a private room. Hui recalled that approximately seven people from Zhang Li's company were also present each time, but he did not remember their names. Hui claimed that his own portion of the dinner cost approximately \$30. Hui's estimate is likely self-serving, and it is possible that the cost was higher. By his own admission, however, it is above the threshold for permissible gifts from restricted sources.

Hui admitted that DBI has authority over the plan check for the Project. DBI has authority over all of the permitting decisions and plans for the Project. Hui also admitted that neither he nor Nuru paid for the dinners. Hui admitted that he did not report the gift of the dinners on his annual Statement of Economic Interests (also known as a "Form 700"). Nor did he report the dinners with Zhang Li and Wong to the Building Inspection Committee ("BIC") after realizing that they were convened to discuss a large Project before DBI. Hui admitted: "I should not have gone" and "I cannot defend it."

The absence of a social relationship between Hui and Wong suggests that, by providing meals and favors to a DBI official, Wong intended to and succeeded in gaining special access to DBI information and to influence Hui in the performance of his official duties. We do not know at this time whether Hui allowed those meals and favors to influence his judgment or actions. But that does not diminish the fact that he accepted them understanding Wong's intent.

Hui knew that the Project would be discussed at these private meals with Wong and the developer, yet he attended at least three or four of these dinners and allowed Wong or the developer to pay each time. Given Hui's understanding of Wong's intent in arranging the meals, Hui violated the CGCC by accepting gifts over the de minimis amount from a restricted source – a restricted source who intended to influence the outcome of the Project subject to DBI review.

Moreover, under DBI's Statement of Incompatible Activities, DBI officials are not permitted to accept any gift that is given in exchange for merely doing one's job. Hui was not permitted to accept meals for doing his job as DBI Director, regardless of what was discussed at the dinners.

Even if Hui was unaware of the purpose of the first meal with Wong and Zhang Li, he did not report the initial improper contact to the Building Inspection Committee or the Mayor's Office and he continued to accept meals from Wong and Zhang Li where they discussed issues with the Project.

2. Hui Sought Wong's Input on City Business

Hui's personal emails show that, in 2013, Hui forwarded Wong draft letters from DBI to the Department of Public Health and the San Francisco Unified School District about a proposed process called "DBI One Stop/OTC [Over the Counter]." Hui had been revising the letters in consultation with the Mayor's Office. He then forwarded the letters from his official City email address to his personal address. Hui forwarded the letters from his personal email address to Wong: "Hi Walter, Please, help me to review both letters and a starting date may need to add. I would like to send out tomorrow. Thanks Tom." Wong responded the same day with proposed language for a new paragraph and an effective date for the new process.

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Although the letters were not included with the email correspondence, it appears that Hui solicited and included Wong's input for a letter from DBI to public agencies about DBI's permitting processes. Hui also concealed the communication with Wong by routing it through his personal email account. A copy of that email correspondence is attached as Exhibit 2. In soliciting Wong's input, Hui allowed someone with private and commercial interests before DBI to influence official correspondence and decision making about DBI permitting processes and gave preferential treatment to Wong.

3. Wong Emailed Hui's Personal Email Seeking Information and Guidance on Properties subject to DBI Applications, Permits and Complaints

In 2015, Wong wrote to Hui at his personal email address to ask for detailed information about complaints at specific properties owned by Xiao Qi Wu, also known as Judy Wu. By the date of Wong's request, DBI had issued Notices of Violation for more than 10 of these properties and referred those Notices of Violation to DBI's Code Enforcement Section. The tone of Wong's emails to Hui suggest that Wong was comfortable making such direct requests of Hui. A copy of that email 2015 request from Wong is attached as Exhibit 3.

Although the information requested by Wong was publicly available, most members of the public did not have direct access to the DBI Director for assistance compiling detailed information about properties under DBI scrutiny. While other members of the public might have been able to compile the same information, Hui provided Wong with an extraordinary access.

In 2016, the City Attorney's Office sued Wu and her husband for code violations at more than 10 of the locations about which Wong was asking in 2015. The Building and Housing Code violations arose from a scheme to purchase single-family homes in the Bayview, illegally subdivide them into four to six units, and then market the units to veterans receiving HUD housing vouchers. Wu and her husband accomplished this scheme by submitting permits to DBI to add multiple laundry rooms to each home for purposes of installing additional gas and water connections. Once this permitted work was completed and approved, Wu and her husband did additional work without permits to create multiple kitchens and bathrooms and add walls. The case settled the day trial was scheduled to begin. Under the settlement, Wu and her husband paid \$2 million in penalties, attorney's fees, and relocation costs and agreed to an injunction requiring them to legalize the properties.

As far back as 2008, before Hui was Director or even Acting Director, Wong emailed Hui to seek Hui's advice about how to respond to a request from DBI related to whether sprinklers would be required at a historic site renovation. On another date in 2008, Wong emailed Hui's personal email address to ask "Pls help to review" revised drawings of pillars at a project.

4. Hui Knowingly Violated City Ethics Laws and Rules

Hui certified that he completed the City's required ethics training each year since 2016, including most recently in February 2020. He understood the laws and rules governing his conduct with permit expeditors and other members of the public. Had he believed his communications with Wong were appropriate, it would have been simpler for him to email

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Wong directly from his official City email address. Hui nevertheless communicated through his personal email and continued to provide Wong with unprecedented access to the Director and, through him, to DBI information and policy.

By attending private dinners funded by Zhang Li, the developer, and Wong, the permit expeditor, for the Project, Hui provided them with preferential effort by and access to DBI violating both the CGCC and DBI's Code of Professional Conduct and also contravening policies in the City's Employee Handbook. That Code of Professional Conduct explicitly clarifies "the difference between preferential treatment and customer service." It explains 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.

Exhibit 1 at p. 11. Most members of the public cannot arrange private meals with the DBI Director to discuss problems with their projects under review by DBI. The DBI Code of Professional Conduct instructs employees to "consider whether you would have been invited to participate in this activity if you had a different job... If not, why were you invited?" Because Hui admitted he had no social relationship with Wong, there is no reason for his attendance at the dinners other than to provide access at the highest levels of DBI to Wong and Zhang Li for questions and information about the Project.

Together with the decades' long pattern of soliciting Wong's input regarding City business and accepting Wong's requests for advice about matters before DBI, these facts demonstrate that Hui intentionally provided preferential treatment and access to Wong, in contravention of the CGCC, DBI's Code of Professional Conduct, and the Employee Handbook.

Further investigation may uncover additional meals or other gifts, and further communications about official DBI business outside of normal communication channels, to provide additional evidence of preferential treatment and access for Wong, Zhang Li, or possibly others.

C. Hui Violated Anti-Favoritism Laws and Policies and Abused his Position by Seeking to Influence City Hiring Decisions

Following the interview on February 18, 2020, Hui voluntarily provided emails from his personal email account. These emails demonstrate that in 2011 and 2012, when Hui was a Deputy Director at DBI, Hui routinely communicated with Wong seeking City employment for his son and his son's girlfriend.

1. Hui Asked Wong to Help his Son Reschedule an Interview

In June 2011, Hui's son was seeking a job at Public Works. The son was unavailable on his scheduled appointment date. The son requested to reschedule the interview, but also forwarded his request to Hui. Then Hui forwarded the email to Wong, asking for assistance: "Hi Walter. Please help my son to change the interview date. Thanks Tom." Wong responded

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the same day: "Can he do a phone interview." This email string is attached to this Memorandum as Exhibit 4.

Hui's son was hired as a permanent civil service classification 5201 Junior Engineer at Public Works in August 2011. He was promoted to a 5203 Assistant Engineer at Public Works in January 2013. The son applied for a position at DBI as a classification 5207 Associate Engineer (Civil), a promotion from his Public Works position. Hui approved the paperwork for his son's appointment. When the Human Resources Director learned of the appointment, she directed Hui to release his son from probation. The son returned to his underlying position at Public Works in April 2016. He resigned with the designation "services satisfactory" in November 2017.

2. Hui Asked Wong to get his Son's Girlfriend a City Job

Throughout 2012, Hui sought Wong's help in securing City employment for his son's girlfriend (now his wife). In January 2012, the girlfriend received a notice from Public Works, advising that she was not selected for a classification 1820 Junior Administrative Analyst. She forwarded that email notice to the son; at some point the email was forwarded to Wong, who asked Nuru, "Can we help them." Nuru responded, "yes i [sic] am working on it. I gave the paperwork to our Human Resource staff. we [sic] should hear soon from them." Wong then forwarded Nuru's email to Hui's personal email address, with the comment "FYI."

In May 2012, Hui's son informed his father that his girlfriend was fifth on a list for a classification 1820 Junior Administrative Analyst Position at the San Francisco Public Utilities Commission ("SFPUC"), forwarding an email the girlfriend had forwarded to him. The son asked for Hui's help: "Hi Dad, Please see what you can do for [girlfriend]."

In June 2012, Hui forwarded to Wong the information from his son about the girlfriend's application at the SFPUC. Hui stated:

Hi Walter,

My son's girlfriend is Miss [redacted] and she is ranked number 5.
Thanks for your help. Please, give me a call if you have any questions.

Thank you very much

Bye

Tom

Later in June 2012, Hui emailed Wong again seeking help for his son's girlfriend:

Hi Walter,

There are two more positions in Rec. & Park. I wish you can help my son's girl friend.

Thanks

Tom Hui

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In September of that year, the girlfriend was ranked 11 on the eligible list and sought a classification 1241 Personnel Analyst position at Public Works. She forwarded the email to Hui's son, who forwarded it to Hui, asking his dad to "see what you can do" about the application. Hui forwarded the email to Wong: "Hi Walter, Please, help me to see DPW can hire my son's girl friend. I will call you and thank you so much. Bye Tom[.]" Wong forwarded the email chain to Nuru at his personal email address, asking "FYI ps help Tom[.]" Nuru forwarded that email to his work email address, and then asked a GSA Human Resources Analyst to look into the application. That GSA Human Resources Analyst informed Nuru that, because the certification rule for the position was the Rule of 10 (that is, limited to the top 10 ranked applicants), the girlfriend was "not reachable." Nuru shared this email with Wong, and Wong forwarded it to Hui with an "FYI." Hui thanked Wong and said, "I wish next referral for her." Wong responded within minutes: "We are working on it."

In 2014, Hui's son's girlfriend was hired as an exempt employee at the SFPUC. In 2015, she transferred into the same position at the San Francisco Municipal Transportation Authority ("SFMTA"), where she remains an employee. She and Hui's son married in 2019.

3. Hui Abused his Official Position and Improperly Attempted to Circumvent the Merit Hiring System

Hui's communications with Wong regarding City employment for his son and his son's girlfriend violated the CGCC's prohibition on any employee seeking to influence a hiring decision involving a relative. Hui's efforts on behalf of his son and his son's girlfriend also violated Civil Service Rules and the Employee Handbook. The emails demonstrate that Hui placed his familial interests ahead of City interests and rules designed to ensure a fair, transparent selection process based on merit. That Hui attempted to influence hiring decisions through a third party rather than by directly contacting other City departments does not mitigate his intent to subvert the City's merit system. In fact, it suggests that he was aware the requests were improper and sought to conceal his involvement by acting through a third party.

Further investigation may uncover additional circumstances where Hui and Wong exchanged favors for personal, familiar or professional benefit at the expense of an open, transparent and fair process.