



RULES AGENDA: November 18, 2020
ITEM: G.5

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: MAYOR LICCARDO
COUNCILMEMBER CARRASCO
COUNCILMEMBER ARENAS

SUBJECT: SEE BELOW

DATE: NOVEMBER 18, 2020

Approved

Date 11/12/20

ACTIONS RELATED TO CITY EMPLOYEE OVERSIGHT AND MISCONDUCT INVESTIGATION

RECOMMENDATION:

1. In the wake of the revelation of the sexual assault, extortion, bribery, and other crimes of former Code Enforcement official William Gerry, direct the City Auditor to include on his workplan an evaluation of oversight and management of Code Enforcement officials, and a recommendation about any needed management improvements within the Division and Department.
 - a. The City Auditor shall, during the November 18 Rules Committee meeting, report how other items on its workplan might be re-prioritized to accommodate this audit.
 - b. The City Auditor shall further opine whether it views this issue appropriate for audit, or better suited for Council investigation pursuant to San Jose City Charter Section 416.

DISCUSSION:

The deeply disturbing news about the sexual assault, extortion, and bribery charges against William Gerry, a former Code Enforcement employee, raise serious questions about oversight. We need to better understand how long Gerry's conduct transpired before it was detected, what

management practices might have enabled such criminal activity, and what changes need to be implemented to avoid such horrors in the future.

The Gerry investigation appears to date back to events commencing in August of 2018, yet reporter Robert Salonga's account in the November 6, 2020 San José Mercury News includes reference to more longstanding misconduct:

"Ironically, long before the criminal investigation against Gerry got underway, he was actually looked at as an extortion victim in a similar context. In October 2018, Gerry reportedly received two letters demanding he shut down two massage businesses or risk being exposed for illicit conduct."

The implication, of course, is that other crooks knew of Gerry's conduct spanning well before October of 2018. All of that took place while Gerry received a salary paid by San Jose taxpayers, supervised and managed by the City of San Jose.

The signers of this memorandum have not had, and will not have, any private conversation with any other member of the City Council, or that member's staff, concerning any action discussed in the memorandum, and that each signer's staff members have not had, and have been instructed not to have, any such conversation with any other member of the City Council or that member's staff.



Memorandum

TO: CITY COUNCIL

FROM: Mayor Sam Liccardo

SUBJECT: Protecting the Public from
Predatory Criminal Behavior
Pending Investigations of
Employee Misconduct

DATE: May 23, 2022

Approved:

Date: 5/23/22

RECOMMENDATION:

1. Direct the Independent Police Auditor (IPA), within this calendar year, to:
 - a. Initiate a review and report findings in public session to the City Council concerning San Jose Police Department investigation of misconduct amounting to predatory criminal behavior by City employees.
 - b. Make recommendations regarding SJPD policies and procedures to ensure protection of the public from such behavior. The scope of that review shall include:
 - i. SJPD's investigatory and disciplinary treatment of sexual battery allegations regarding Officer Matthew Dominguez in May of 2021, and the decisionmaking regarding whether he would be placed on administrative leave or reassigned pending that investigation; and
 - ii. The SJPD's determination that it could not or would not investigate two anonymous complaints— received in December of 2018 and February of 2019— against former City of San Jose Code Enforcement Inspector William Gerry, recently sentenced to a term of 35 years of prison on sexual assault, bribery, and extortion charges; and
 - iii. Any other examples in which place at issue the timeliness or responsiveness of a SJPD investigation of allegations of criminally predatory behavior by any other City employees that could pose a risk on the community.

- c. The City Auditor and City Manager shall work in coordination with the IPA to ensure she has access to a complete factual record that includes any work previously performed by those offices.
- d. To the extent that the City Attorney determines that the scope of this direction exceeds the authority of the Independent Police Auditor, the Council shall consider an independent investigation pursuant to Section 416 of the San Jose City Charter.¹

2. Direct the City Manager to return to Council to describe what citywide policies have been implemented—or will be implemented—to address the risk of exposing the public to harmful behavior pending investigations of City employees’ criminal conduct, such as by establishing that credible allegations of predatory criminal conduct constitute a clear “trigger” for mandatory leave until an investigation has concluded.

Discussion:

Allegations of criminal behavior by two city employees, SJPD Officer Matthew Dominguez and former Code Enforcement Inspector William Gerry, had come to the attention of the San Jose Police Department months before their arrest. Although each case presents very different behavior and circumstances, one critical similarity exists between these cases: each City employee continued working in their public-facing role for several months, subjecting additional members of the community to harm and risk.

Under state law, City employees have rights to a full and fair investigation of any allegations of misconduct prior to termination or other disciplinary action. That doesn’t settle the question, however, of why these employees were not placed on leave or otherwise reassigned to mitigate the risk of harm to the public from their behavior.

Under Section 809 of the Charter,² the Independent Police Auditor has the authority to review these episodes, and make recommendations to the Mayor, Council, and City Manager concerning changes in policies and practices that will better protect the public.

¹ Section 416 of the San Jose City Charter provides:

Investigations. The Council may make investigations into the affairs of the City and the conduct of any City department, office, or agency, and for this purpose may subpoena witnesses, administer oaths, take testimony, and require the production of evidence. Disobedience of any subpoena or the refusal to testify upon other than constitutional grounds shall be punishable by contempt proceedings.

² Specifically, Section 809 of the San Jose City Charter provides:

The Independent Police Auditor shall have the following powers and duties:

(a) Review Police Department investigations of complaints initiated by members of the public and administrative investigations initiated by the Police Department against police officers to determine if the investigation was complete, thorough, objective and fair....

(c) ...Make recommendations with regard to Police Department policies and procedures.

The facts giving rise to these concerns have been well-publicized:

- SJPD Officer Matthew Dominguez was recently arrested and charged for exposing himself to a family in their home in April of 2022. Since that time, the public has become aware of a previous credible allegation by a 25-year-old woman of sexual battery, occurring the prior May. Specifically, she reported to the IPA that during a party at the home of another SJPD officer, Dominguez allegedly touched her breasts and thigh and kept trying to touch her even after she rebuffed his advances. [Although the Campbell Police Department was the lead law enforcement agency investigating the case, the IPA alerted SJPD's Internal Affairs unit in June 2021, but Officer Dominguez continued to serve as an officer for ten months thereafter, until the April 2022 episode.](#)
- Former San Jose Code Enforcement Inspector William Gerry was recently sentenced to 35 years in prison for his crimes of bribery, extortion, and sexual assault. According to the [City Auditor's Office's account of the anonymous complaints](#) brought to the City's attention:

“In October and November 2018, Code Enforcement and the Police Department each received anonymous letters that appeared to be similar in nature. Letters addressed to the code inspector at City Hall threatened to expose inappropriate behavior by the inspector if he did not close a particular business. Some letters enclosed a picture of the inspector with his arms around a woman allegedly at a massage business. Division leadership referred letters it had received to the Police Department's Vice Unit for investigation and instructed the inspector not to go to the locations identified within the letters until further notice. The Police Department reported that they received similar letters. The Police Department interviewed the code inspector and determined that the letters were extortion letters to the inspector and filed a police report.

In December 2018, an anonymous complaint came through the City's online Whistleblower Hotline form alleging instances of inappropriate touching and taking bribes and soliciting services from other businesses. The Office of Employee Relations (OER) forwarded it to the Vice Unit in the Police Department. Because of the anonymous nature of the complaint, the Police Department determined it could not investigate as there was no way to contact the complainant. Code Enforcement reports they were not made aware of this complaint.

In late March 2019, another anonymous complaint came through the Whistleblower Hotline alleging that the inspector was taking bribes and services in exchange for keeping massage businesses off the Police Department's radar. OER also referred this to the Vice Unit. Like the December 2018 complaint, the Police Department

determined they could not investigate because of the anonymous nature of the complaint. Code Enforcement reports they were not made aware of this complaint either.”³

Only after four complaints and a civil lawsuit did a City Attorney’s Office investigation lead to a witness whose statements triggered the arrest of Mr. Gerry. Some of his criminal conduct occurred on the job well after the receipt of the first several complaints in 2018.

Although an audit was conducted of the Gerry matter to review decisions by City management, we have seen no review of the SJPD’s role. In particular, we should better understand what field investigation was conducted— beyond the interview of Mr. Gerry—upon the receipt of each of the four separate complaints and troubling photographic evidence. The anonymous nature of the complaints may have obscured the identity of the complaining party, but the specific businesses involved appeared to be readily discoverable, and employees could have been interviewed. Most importantly, there appears to have been no coordination between SJPD and the City Manager regarding the predicate information needed to enable the CMO to decide whether to place Mr. Gerry on leave pending further investigation.

We must ensure that when a reasonable suspicion arises of serious misconduct by a City employee, no member of our community is subjected to a single hour of that predatory criminal conduct. We must do better.

³ The full report can be found here:

<https://www.sanjoseca.gov/home/showpublisheddocument/76746/637661763704577741>