



**CIVIL SERVICE COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

**LONDON N. BREED
MAYOR**

Sent via Electronic Mail

October 26, 2023

NOTICE OF CIVIL SERVICE COMMISSION MEETING

Jose Santiago
[REDACTED]

SUBJECT: REQUEST FOR A HEARING BY JOSE SANTIAGO, FORMER 3417 GARDENER WITH THE SAN FRANCISCO DEPARTMENT OF PUBLIC WORKS ON THEIR FUTURE EMPLOYMENT RESTRICTIONS WITH THE CITY AND COUNTY OF SAN FRANCISCO.

Dear Jose Santiago:

The above matter will be considered by the Civil Service Commission at a hybrid meeting (in-person and virtual) in Room 400, City Hall, 1 Dr. Goodlett Place, San Francisco, California 94102 and through Cisco WebEx to be held on **November 6, 2023, at 2:00 p.m.** You will receive a separate email invite from a Civil Service Commission staff member to join and participate in the meeting.

The agenda will be posted for your review on the Civil Service Commission's website at www.sf.gov/CivilService under "Meetings" no later than end of day on Wednesday, November 1, 2023. Please refer to the attached Notice for procedural and other information about Commission hearings. A copy of the department's staff report on your appeal is attached to this email.

In the event that you wish to submit any additional documents in support of your appeal, please submit **one hardcopy 3-hole punch, double-sided and numbered at the bottom of each page to the CSC Office at 25 Van Ness Ave., Suite 720 and email a PDF version to the Civil Service Commission's email at civilservice@sfgov.org by 5:00 p.m. on Tuesday, October 31, 2023**, please be sure to redact your submission for any confidential or sensitive information that is not relevant to your appeal (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

Attendance by you or an authorized representative is recommended. Should you or a representative not attend, the Commission will rule on the information previously submitted and any testimony provided at its meeting. Where applicable, the Commission has the authority to uphold, increase, reduce, or modify any restrictions recommended by the department. All calendared items will be heard and resolved at this time unless good reasons are presented for a continuance.

You may contact me at (628) 652-1100 or at Sandra.Eng@sfgov.org if you have any questions.

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Attachment

Cc: Carla Short, Department of Public Works
Karen Hill, Department of Public Works
Sharee Nisha, Department of Public Works
Carol Isen, Department of Human Resources
Jesee Franklin, Department of Public Works
Shawn Sherburne, Department of Human Resources
Lisa Pigula, Department of Human Resources
Anna Biasbas, Department of Human Resources
Paul Greene, Department of Human Resources
Christine Cayabyab, Department of Public Works
Donna Ho, Department of Human Resources
Commission File
Chron

NOTICE OF COMMISSION HEARING POLICIES AND PROCEDURES

A. Commission Office

The Civil Service Commission office is located at, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. The telephone number is (628) 652-1100. The fax number is (628) 652-1109. The email address is civilservice@sfgov.org and the web address is www.sfgov.org/civilservice/. Office hours are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

B. Policy Requiring Written Reports

It is the policy of the Civil Service Commission that except for appeals filed under Civil Service Commission Rule 111A Position-Based Testing, all items appearing on its agenda be supported by a written report prepared by Commission or departmental staff. All documents referred to in any Agenda Document are posted adjacent to the Agenda, or if more than one (1) page in length, available for public inspection and copying at the Civil Service Commission office. Reports from City and County personnel supporting agenda items are submitted in accordance with the procedures established by the Executive Officer. Reports not submitted according to procedures, in the format and quantity required, and by the deadline, will not be calendared.

C. Policy on Written Submissions by Appellants

All written material submitted by appellants to be considered by the Commission in support of an agenda item shall be submitted to the Commission office, no later than 5:00 p.m. on the fourth (4th) business day preceding the Commission meeting for which the item is calendared (ordinarily, on Tuesday). An original copy on 8 1/2-inch X 11 inch paper, three-hole punched on left margin, and page numbered in the bottom center margin, shall be provided. Written material submitted for the Commission's review becomes part of a public record and shall be open for public inspection.

D. Policy on Materials being Considered by the Commission

Copies of all staff reports and materials being considered by the Civil Service Commission are available for public view 72 hours prior to the Civil Service Commission meeting on the Civil Service Commission's website at <https://sf.gov/civilservice> and in its office located at 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102. If any materials related to an item on this agenda have been distributed to the Civil Service Commission after distribution of the agenda packet, those materials will be available for public inspection at the Civil Service Commission's during normal office hours (8:00 a.m. to 5:00 p.m. Monday through Friday).

E. Policy and Procedure for Hearings to be Scheduled after 5:00 p.m. and Requests for Postponement

A request to hear an item after 5:00 p.m. should be directed to the Executive Officer as soon as possible following the receipt of notification of an upcoming hearing. Requests may be made by telephone at (628) 652-1100 and confirmed in writing or by fax at (628) 652-1109.

A request for a postponement (continuance) to delay an item to another meeting may be directed to the Commission Executive Officer by telephone or in writing. Before acting, the Executive Officer may refer certain requests to another City official for recommendation. Telephone requests must be confirmed in writing prior to the meeting. Immediately following the "Announcement of Changes" portion of the agenda at the beginning of the meeting, the Commission will consider a request for a postponement that has been previously denied. Appeals filed under Civil Service Commission Rule 111A Position-Based Testing shall be considered on the date it is calendared for hearing except under extraordinary circumstances and upon mutual agreement between the appellant and the Department of Human Resources.

F. Policy and Procedure on Hearing Items Out of Order

Requests to hear items out of order are to be directed to the Commission President at the beginning of the agenda. The President will rule on each request. Such requests may be granted with mutual agreement among the affected parties.

G. Procedure for Commission Hearings

All Commission hearings on disputed matters shall conform to the following procedures: The Commission reserves the right to question each party during its presentation and, in its discretion, to modify any time allocations and requirements.

If a matter is severed from the *Consent Agenda* or the *Ratification Agenda*, presentation by the opponent will be for a maximum time limit of five (5) minutes and response by the departmental representative for a maximum time limit of five (5) minutes. Requests by the public to sever items from the [*Consent Agenda* or] *Ratification Agenda* must be provided with justification for the record.

For items on the *Regular Agenda*, presentation by the departmental representative for a maximum time of five (5) minutes and response by the opponent for a maximum time limit of five (5) minutes.

For items on the *Separations Agenda*, presentation by the department followed by the employee or employee's representative shall be for a maximum time limit of ten (10) minutes for each party unless extended by the Commission.

Each presentation shall conform to the following:

1. Opening summary of case (brief overview);
2. Discussion of evidence;
3. Corroborating witnesses, if necessary; and
4. Closing remarks.

The Commission may allocate five (5) minutes for each side to rebut evidence presented by the other side.

H. Policy on Audio Recording of Commission Meetings

As provided in the San Francisco Sunshine Ordinance, all Commission meetings are audio recorded in digital form. These audio recordings of open sessions are available starting on the day after the Commission meeting on the Civil Service Commission website at www.sfgov.org/civilservice/.

I. Speaking before the Civil Service Commission

Speaker cards are not required. The Commission will take in-person public comment on all items appearing on the agenda at the time the item is heard. The Commission will take public comment on matters not on the Agenda, but within the jurisdiction of the Commission during the "Requests to Speak" portion of the regular meeting. Maximum time will be three (3) minutes. A subsequent comment after the three (3) minute period is limited to one (1) minute. The timer shall be in operation during public comment. Upon any specific request by a Commissioner, time may be extended. People who have received an accommodation due to a disability (as described below) may provide their public comments remotely. The Commission will also allow public comment from members of the public who choose to participate remotely. It is possible that the Commission may experience technical challenges that interfere with the ability of members of the public to participate in the meeting remotely. If that happens, the Commission will attempt to correct the problem, but may continue the hearing so long as people attending in-person are able to observe and offer public comment.

J. Public Comment and Due Process

During general public comment, members of the public sometimes wish to address the Civil Service Commission regarding matters that may come before the Commission in its capacity as an adjudicative body. The Commission does not restrict this use of general public comment. To protect the due process rights of parties to its adjudicative proceedings, however, the Commission will not consider, in connection with any adjudicative proceeding, statements made during general public comment. If members of the public have information that they believe to be relevant to a matter that will come before the Commission in its adjudicative capacity, they may wish to address the Commission during the public comment portion of that adjudicative proceeding. The Commission will not consider public comment in connection with an adjudicative proceeding without providing the parties an opportunity to respond.

K. Policy on use of Cell Phones, Pagers and Similar Sound-Producing Electronic Devices at and During Public Meetings

The ringing and use of cell phones, pagers and similar sound-producing electronic devices are prohibited at this meeting. Please be advised that the Chair may order the removal from the meeting room of any person(s) responsible for the ringing or use of a cell phone, pager, or other similar sound-producing electronic devices.

Information on Disability Access

The Civil Service Commission normally meets in Room 400 (Fourth Floor) City Hall, 1 Dr. Carlton B. Goodlett Place. However, meetings not held in this room are conducted in the Civic Center area. City Hall is wheelchair accessible. The closest accessible BART station is the Civic Center, located 2 ½ blocks from City Hall. Accessible MUNI lines serving City Hall are 47 Van Ness Avenue, 9 San Bruno and 71 Haight/Noriega, as well as the METRO stations at Van Ness and Market and at Civic Center. For more information about MUNI accessible services, call (415) 923-6142. Accessible curbside parking has been designated at points in the vicinity of City Hall adjacent to Grove Street and Van Ness Avenue.

The following services are available on request 48 hours prior to the meeting; except for Monday meetings, for which the deadline shall be 4:00 p.m. of the last business day of the preceding week. For American Sign Language interpreters or the use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please contact the Commission office to make arrangements for the accommodation. Late requests will be honored, if possible.

Individuals with severe allergies, environmental illness, multiple chemical sensitivity or related disabilities should call our ADA coordinator at (628) 652-1100 or email civilservice@sfgov.org to discuss meeting accessibility. In order to assist the City's efforts to accommodate such people, attendees at public meetings are reminded that other attendees may be sensitive to various chemical-based products. Please help the City to accommodate these individuals.

Know your Rights under the Sunshine Ordinance (Chapter 67 of the San Francisco Administrative Code)

Government's duty is to serve the public, reaching its decisions in full view of the public. Commissions, boards, councils, and other agencies of the City and County exist to conduct the people's business. This ordinance assures that deliberations are conducted before the people and that City operations are open to the people's review. For more information on your rights under the Sunshine Ordinance or to report a violation of the ordinance, or to obtain a free copy of the Sunshine Ordinance, contact Victor Young, Administrator of the Sunshine Ordinance Task Force, 1 Dr. Carlton B. Goodlett Place, Room 244, San Francisco, CA 94102-4689 at (415) 554-7724, by fax: (415) 554-7854, by e-mail: soft@sfgov.org, or on the City's website at www.sfgov.org/bdsupvrs/sunshine.

San Francisco Lobbyist Ordinance

Individuals and entities that influence or attempt to influence local legislative or administrative action may be required by the San Francisco Lobbyist Ordinance (San Francisco Campaign and Governmental Conduct Code Section 2.100) to register and report lobbying activity. For more information about the Lobbyist Ordinance, please contact the San Francisco Ethics Commission at 25 Van Ness Ave., Suite 220, San Francisco, CA 94102, telephone (415) 252-3100, fax (415) 252-3112 and web site <https://sfethics.org/>.



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

CIVIL SERVICE COMMISSION REPORT TRANSMITTAL (FORM 22)

Refer to Civil Service Commission Procedure for Staff - Submission of
Written Reports for Instructions on Completing and Processing this Form

1. Civil Service Commission Register Number: 0194-21-7
2. For Civil Service Commission Meeting of: November 6, 2023
3. Check One: Ratification Agenda
 Consent Agenda
 Regular Agenda X
 Human Resources Director's Report
4. Subject: **Appeal of Permanent Future Employment Restrictions by Jose Santiago, former 3417 Gardener with the San Francisco Department of Public Works.**
5. Recommendation: **Uphold Department of Public Works' decision to restrict the future employment of Jose Santiago with the City and County of San Francisco and deny the appeal.**
6. Report prepared by: Jesse Franklin, Employee and Labor Relations Analyst, San Francisco Public Works,
Telephone number: 415-818-2154
7. Notifications: Please see attached Notification List.
8. Reviewed and approved for Civil Service Commission Agenda:

 Human Resources Director:

 Date:
9. Submit the original time-stamped copy of this form and person(s) to be notified
(see Item 7 above) along with the required copies of the report to:

 **Executive Officer
Civil Service Commission
25 Van Ness Avenue, Suite 720
San Francisco, CA 94102**
10. Receipt-stamp this form in the ACSC RECEIPT STAMP≡
box to the right using the time-stamp in the CSC Office.

Attachment

<u>CSC RECEIPT STAMP</u>

Notifications

Jose Santiago



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Carla Short, Interim Director | Director's Office

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MEMORANDUM

Date: October 24, 2023

To: Honorable Civil Service Commission

Through: Carol Isen
Human Resources Director
City and County of San Francisco

Through: Sharee Nisha
Employee & Labor Relations Director
San Francisco Public Works

From: Christine Cayabyab
Employee & Labor Relations Manager
San Francisco Public Works

Subject: Jose A. Santiago III, former 3417 Gardener, San Francisco Public Works's Decision to Place Future Employment Restriction; Civil Service Register No. 0194-21-7

BACKGROUND

Jose Santiago III (Appellant) is appealing the decision of San Francisco Public Works (Department) to impose a permanent citywide future employment restriction for the Appellant on October 30, 2021, upon his dismissal from his Permanent Civil Service (PCS) 3417 Gardener position.

ISSUE

The Appellant was dismissed from his permanent classification 3417 Gardener position with the Department on October 30, 2021, for the following reasons:

- (1) Dishonesty;
- (2) Misuse of City Time and Resources;
- (3) Violation of the Department's Policy and Procedures (Leaving Assigned Work Area);
- (4) Violation of the City's Vehicle Policy, Citywide Vehicle Use Policy, and Department's Vehicle Use Policy;
- (5) Violation of the City's Attendance and Punctuality Policy.

On November 18, 2021, the Appellant sent a request to appeal the future employment restriction to the Civil Service Commission (CSC). The matter before the Commission is if it is reasonable to permanently preclude the Appellant from future employment with the Department and the City and County of San Francisco. In accordance with the Civil Service Rules, the Department submits this staff report for the Civil Service Commission's review and consideration.

AUTHORITY AND STANDARDS

The Department's procedure of dismissal of permanent employees is governed by the Civil Service Commission Rule 114 (**Exhibit A**) and Civil Service Commission Rule 122 (**Exhibit B**) as set forth below:

Sec. 114.2 Permanent Appointment – Definition

A permanent appointment is an appointment made as a result from an eligible list to a permanent position.

Sec. 122.7.1 Dismissal of Permanent Employee

A permanent employee who has completed the probationary period may be dismissed for cause upon written charges and after having an opportunity to be heard in his/her own defense.

Policy and Guidelines regarding Future Employment Restrictions under Civil Service Rule Series 022

The Civil Service Rules Series 022 provides that the appointing officer of Human Resources Director may impose restrictions on a separated employee's future employment with the department and/or City – either indefinitely or conditioned on the individual meeting certain requirements – subject to appeal to the Civil Service Commission.

Misuse of City Time and Resources

The City's Policy on Use of City and County Property for Business Purposes Only contained in the City's Employee Handbook (**Exhibit C**) states in relevant part:

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited.

The Department's Policy and Procedures for Leaving Assigned Work Area

Appropriate Use of City Vehicles Policy (**Exhibit D**), dated March 16, 2016, from Larry Stringer, former Deputy Director, states in relevant parts:

All field employees are required to take coffee and lunch breaks within their assigned areas. If you leave your area for any reason, you must contact your supervisor for approval beforehand. City vehicles must remain in their work area that day.

and

All City vehicles are for official City business use only. Employees may not use a City vehicle for personal errands...

The City's Vehicles Use Policy

The City Employee Handbook Policy regarding Vehicle Use Policy (**Exhibit E**) states in relevant part:

Like all City resources, City vehicles are to be used for City business only. City vehicles may not be used for personal business. Employees who violate the Vehicle Code or any other applicable laws and City policies in City Vehicles may be subject to disciplinary action, up to and including termination.

The City and County of San Francisco Employee Handbook Attendance and Punctuality Policy

The City and County of San Francisco Employee Handbook Attendance and Punctuality Policy states in relevant part:

“Regular and prompt attendance is an essential requirement of your job. As a City employee, you are to report to your work station at your scheduled work time. Your time records must accurately reflect the time you start work and the number of hours worked in every work day.”

Findings

The Appellant was hired on August 16, 2008, with Public Works as a temporary exempt classification 9916, Public Service Aide. The Appellant was then promoted to a temporary exempt classification 7501 Environmental Service Worker on February 27, 2009. Appellant was terminated from employment on April 23, 2011, and then rehired by Public Works as a temporary exempt classification 7514 General Laborer on July 1, 2011. On August 31, 2013, San Francisco Public Works (Department) hired the Appellant as a permanent civil service (PCS) 3417 Gardener. He was assigned to the Department's Bureau of Urban Forestry (BUF). The Appellant performed maintenance and landscaping renovation tasks to care for the City's athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas.

On December 01, 2020, The City received this anonymous Whistleblower Complaint:

DPW Worker dropped off about 29 rolls of SOD to a private residence at 370 Naples. Driving white twin cab pickup. Hispanic, shaved head. Was there maybe 10 minutes. Truck number started with 450; couldn't see the remaining 3 numbers; possibly 681. Small City emblem on door. Truck had a large sticker by the gas tank driver's side.

The complainant identified that the incident occurred on December 01, 2020, at about 12:15pm.

Thereafter, the Whistleblower Program conducted a preliminary investigation. It pulled GPS reports and saw that the Appellant drove truck 450-608, and that truck was next to 370 Naples at the same time and date noted in the complaint. The GPS records showed that the Appellant reported to his work area and work site for two hours. The report showed he left his assigned

area and was near the PW shack where the sod was stored. Records showed that the truck the Appellant drove was then parked next to the address listed in the complaint around the same time the complaint alleged a PW employee dropped off the sod.

On February 25, 2021, The City Administrator's Office initiated an investigation.

Misuse of City Time and Resources

The investigation found that on December 1, 2020, the Appellant misused City resources when he misappropriated sod, which is City property, without approval, and dropped off twenty (20) rolls of sod to a San Francisco residence. GPS records confirmed that the Appellant drove to the location where the Department stored the sod, and was there from 11:29 a.m. until 11:50 a.m. The Appellant next drove to 370 Naples, where he remained from 12:12 p.m. until 12:23 p.m.

Violation of Department Policy and Procedures (Leaving Assigned Work Area)

The investigation found that on December 1, 2020, the Appellant drove to and parked his City vehicle at five (5) different locations that were outside of his assigned work area that day. The Appellant did not notify or receive authorization from his supervisor to drive outside of his assigned work area. There was also no record of any service orders or special projects to be fulfilled at those locations. The Appellant violated the Department policy because he left his work area without any authorization from his supervisor. The Appropriate Use of City Vehicles (**Exhibit D**) in states in relevant part:

All field employees are required to take coffee and lunch breaks within their assigned areas. If you must leave your area for any reason, you must contact your supervisor for approval beforehand. City vehicles must remain in their assigned districts.

Violation of City's Vehicle Policy, Citywide Vehicle Use Policy, and Department's Vehicle Use Policy

The investigation found that on December 1, 2020, the Appellant violated the City Vehicles Policy; the Citywide Vehicle Use Policy; and the Deputy Director for Operations City Vehicles Use Policy memo when he used a City vehicle and City resources for non-City business when he drove and parked his City vehicle at five (5) non-work locations.

Violation of City's Attendance and Punctuality Policy

The investigation found that on December 1, 2020, the Appellant was scheduled to start work at 5:00 a.m. but did not arrive until 7:06 a.m. The Appellant did not inform his supervisor or follow Department call-off procedures. The Appellant performed work at the Junipero Serra Boulevard Project from 8:25 a.m. to 10:26 a.m., for a total of two (2) hours. The Appellant left the Junipero Serra Boulevard Project site and 10:26 a.m., and thereafter did not perform any more work that day. The Appellant proceeded to drive around and parked at five non-work locations. The Appellant was paid for six (6) hours when records showed that he spent a total of two (2) hours of his day at his assigned work area. The Appellant did not accurately report his time on December 1, 2020.

Dishonesty

Appellant denied that on December 1, 2020, at approximately 12:15 p.m. he dropped off twenty (20) rolls of sod at the 370 Naples address in San Francisco. However, the Department's Key Watcher records confirm that the Appellant was issued and drove vehicle 450-608 on December 1, 2020.

Department GPS records of vehicle number 450-608 show that the Appellant completed approximately two (2) hours of work at his assigned area then proceeded to drive to Sloat Boulevard at Sunset Avenue, which is where sod is kept. GPS records further showed that Appellant's vehicle then proceeded outside of his work area to the vicinity of 370 Naples.

When confronted with the evidence supporting the allegation that the Appellant took the sod, the Appellant offered two contradictory defenses. First, the Appellant claimed that he did not take the sod, then the Appellant claimed that his supervisor, Doug Reed, told the Appellant that staff they could take the sod. The investigator interviewed the Appellant, Reed, and five other BUF employees. None of the five witnesses interviewed reported hearing Reed tell staff they could take the sod. Angel Gonzales (Gonzales), a classification 3417 Gardener, reported that Reed told Gonzales that the sod needed to be taken to the dump. The investigation established that the Appellant was more, likely than not, dishonest when he claimed Reed said the sod could be taken by employees.

Based on the above, on July 29, 2021, the Department issued the Appellant a Notice of Proposed Dismissal and the Skelly meeting (Notice). **(Exhibit H)**

A *Skelly* meeting was held on August 31, 2021. The Appellant did not attend the meeting, but his Union representative attended in his stead. The Union representative said that the Appellant would provide a written response to the charges by September 07, 2021.

On September 7, 2021, Appellant provided a written response to the charges via email to Jason Jimenez, Senior Employee and Labor Relations Analyst with the City Administrators Human Resources Office. In his response, the Appellant disputed that he was provided the Notice of Intent to Dismiss on July 29, 2021, or that the Notice was hand delivered on August 16, 2021. He also disputed that it was his assigned vehicle mentioned in the complaint or that he drove the vehicle 450-608. The Appellant also asserted that the Department had falsified documents to support the release. **(Exhibit J)**

On October 22, 2021, the Skelly Officer provided the Skelly Report and Recommendation upholding all charges and recommended dismissal. The Skelly Officer, Breonna Santiago, noted in her response in reference to the Appellant's written response **(Exhibit K)**:

Mr. Santiago failed to make a compelling argument to dispute each charge and how his character is described as an unbecoming City and County of San Francisco employee. Mr. Santiago opted to combat information that is supported by the Whistleblower's statement and description of the event, photo evidence, payroll, and Keywatch records, as well as interview statement from other Bureau of Urban Forestry staff.

Subsequently, on October 29, 2021, the Department issued the Appellant a Notice of Dismissal and listed the following charges: (1) Dishonesty; (2) Misuse of City Time and Resources; (3) Violation of DPW Policy and Procedures (Leaving Assigned Work Area); (4) Violation of the

City's City Vehicles Policy, Citywide Vehicle Use Policy, and DPW's City Vehicle Use Policy; and (5) Violation of the City's Attendance and Punctuality Policy. (**Exhibit L**)

On November 12, 2021, Laborers, Local 261 filed a Step II Grievance on behalf of the Appellant. The Grievance was denied at Step II, and Step III. The matter was moved to arbitration and Arbitrator Yuval Miller, Esq. (Miller) upheld the dismissal and denied the grievance. Miller issued his opinion and award on February 13, 2023. (**Exhibit M**)

During the arbitration hearing, the Appellant testified that he has never used the 370 Naples address for any purpose and does not know the residents Loida Torres, Irene Catagena, or Dora Torres. In rebuttal, City Investigator Borys Procak (Procak) gave impeachment testimony, testifying that on November 16, 2022, Procak ran a CLEAR report which shows that the Appellant used 370 Naples as an associate address in November of 2018.¹

In arbitrator Miller's Opinion and Award discussion, they say:

... Grievant consistently has withheld information about his connection to 370 Naples, an address he used in November 2018. The Whistleblower Complaint's suggestion that Grievant left something in front of the precise address he used for his own financial purposes just two years earlier – and during the short window of time his truck was tracked outside of that same address – is too idiosyncratic to be mere coincidence."

Discussion and Analysis

The Civil Service Commission (CSC) guidelines on Future Employment Restrictions highlights the responsibility of departments to consider future employment restrictions on a case-by-case basis, factoring in the egregiousness, any patterned behavior, and consequence of the conduct². The CSC further provides a non-exhaustive list of infractions that could merit placing employment restrictions on someone. Of that list, the following apply in Appellant's case:

- Egregious misconduct.
- Serious unethical conduct which may mar the Department's reputation and/or the public's trust in the department/City.
- Misappropriation of public/City/department funds or property.
- Destruction or serious misuse of public/City/department property.

On December 1, 2020, the Appellant was over two (2) hours late and did not follow departmental reporting procedures. The Appellant reported to his assigned work site at the Junipero Serra Boulevard Project from 8:25 a.m. and then left his assigned work area around 10:26 a.m. using his City issued vehicle. The Appellant drove to five (5) different locations that were outside of his assigned work area without authorization and without any business reasons to do so. Records also showed that he reported that he worked for six (6) hours when he performed about two (2) hours of work that day. The Appellant then went to the location where the Department stored the sod and took 20 rolls of sod and dropped it off to a private residence in San Francisco. The

¹ CLEAR is a proprietary database comprised of information that credit bureaus compile. The report shows that the Appellant was "associated" with 370 Naples – meaning he used it in connection with a transaction that would be registered by a credit bureau, such as applying for a line of credit.

² Civil Service Commission Policy and Guidelines on Restrictions on Future Employment – Adopted April 21, 2014, Memorandum No. 2014-10.

Appellant's conduct violated City's Attendance and Punctuality Policy, the City's Business Use Policy; The City's Vehicle Use Policy, and the Department's Vehicle Use Policy.

The Appellant was hired as a Gardner with the City and was entrusted with the responsibility of serving and advancing the public interest. However, rather than upholding this important responsibility, the Appellant used his position with the City to serve his personal interests. On December 1, 2020, the Appellant willfully stole City property using his assigned City vehicle. The Appellant further claimed to have worked six (6) hours that day when he worked about two (2). He misused the City's time and reported that he worked that day. The Appellant's serious and unethical conduct violated the public's trust and caused the loss of public trust in the Department. His conduct was further in violation of multiple City and Department policies and procedures.

In 2019, the Appellant was suspended for one (1) day due to continued excessive absenteeism; continued patterned of sick leave abuse; and violation of the Attendance and Punctuality Policy. **(Exhibit F)**

In 2020, the Appellant was suspended for ten (10) days due to his misuse of City time and resources; violation of Department policy and procedures with regard to leaving his assigned work area; failure to notify his supervisor after completing work early; violation of the City's Attendance and Punctuality Policy; and dishonesty. **(Exhibit G)**

The Appellant was on notice that continued misconduct may result in further discipline or dismissal, but his conduct did not improve demonstrating that no amount of discipline could correct conduct that violated City and Department policies. Despite steps to correct his behavior, the Appellant continued to engage in a pattern of misusing City time and resources and escalated it further by stealing City property. When a City employee steals from the public, this breaches the public trust. The Appellant's action not only impacted his reputation, but it also tarnished the reputation of the City. Based on this, the Appellant cannot be trusted in any publicly funded position with the City. The City strives to employ the best qualified employees. Further, the Appellant repeatedly demonstrated dishonesty, including during the investigatory meeting and the arbitration hearing. Thus, the Appellant is very likely to repeat the pattern of engaging in egregious misconduct creating liability for the City.

Further, the Appellant failed to take any responsibility for his misconduct as stated by Arbitrator Miller.

To quote Miller's Arbitration Award and Opinion:

"Grievant's misuse of work time and willful omission of material facts each constitute gross misconduct subject to serious discipline up to and including termination. Though Grievant's decade-long tenure and active involvement with the City and community cannot be ignored, one aggravating factor would make reinstatement inappropriate here even if Grievant's record did not include a ten-day suspension for being unable to account for significant time away from his work area: Grievant has failed to acknowledge, let alone take responsibility for, his actions.

...Grievant has sought to hide his conduct by shifting blame, falsely pleading ignorance, and refusing to admit any part of his misconduct, neither the City nor the public can be

expected to trust him moving forward. His continued employment would harm the public service.”

In considering whether an employee should permanently be banned from employment, the Department recognizes that people may change over time, and that employment with the City is a boon that can change people and families’ lives. To date, the Appellant has never admitted any wrongdoing, or shown the slightest remorse or contrition. The Appellant did not change after being suspended for ten (10) days. To the contrary, the Appellant was emboldened – committing the same misconduct in addition to stealing City property. The Appellant had the opportunity to change but chose not to. The Appellant has held fast to his position of innocence, even through arbitration which concluded in February of 2023. Honorable Commission, a ban on the Appellant’s future employment is necessary based on the totality of the circumstance, the pattern of misconduct, and the egregious and unethical misconduct.

Recommendation

For the reasons discussed above, the Department respectfully requests that the Civil Service Commission uphold the Appellant’s Citywide ban on future employment with the City and County of San Francisco.

Exhibits

- Exhibit A: Civil Service Commission Rule 114
- Exhibit B: Civil Service Commission Rule 122
- Exhibit C: Employee Handbook Business Use Policy
- Exhibit D: 2016 Larry Stringer PW Vehicle Use Policy
- Exhibit E: Employee Handbook City Vehicles Policy
- Exhibit F: Santiago Notice of 1-day Suspension
- Exhibit G: Santiago Notice of 10-day Suspension
- Exhibit H: Santiago Investigatory Report
- Exhibit I: Santiago Notice of Proposed Dismissal
- Exhibit J: Santiago Skelly Response Email
- Exhibit K: Santiago *Skelly* Recommendation
- Exhibit L: Santiago Notice of Dismissal
- Exhibit M: Miller Opinion and Award

Exhibit A

Civil Service Commission Rule
114

Except as otherwise provided in these Rules, ordinances, or the Charter, the decision of the appointing officer in all matters regarding appointment shall be final.

Sec. 114.2 **Permanent Appointment - Definition**

A permanent appointment is an appointment made as a result of certification from an eligible list to a permanent position.

Sec. 114.3 **Method of Appointment - Permanent Appointment**

Permanent appointments shall be made in the following order of priority:

114.3.1 by the return to duty of a permanent holdover;

114.3.2 by the reinstatement of a promotive probationary employee consistent with the provisions in the Reinstatement Rule governing such employees;

Sec. 114.3 **Method of Appointment - Permanent Appointment (cont.)**

114.3.3 by the appointing officer through use of any one of the following options:

1) advancement of a part-time or school-term employee to full-time status consistent with the requirements found elsewhere in this Rule; or

2) transfer; or

3) from requests for reinstatement other than by the reinstatement of a promotive probationary employee consistent with the provisions in the Reinstatement Rule governing such employees; or

4) by reappointment following resignation; or

5) by certification by the Department of Human Resources of eligibles from a regular list or reemployment register.

Exhibit B

Civil Service Commission Rule
122

Visit San Francisco's new website, [SF.gov](https://sf.gov)

Civil Service Commission

Rule 122 Employee Separation Procedures

Rule 122

Employee Separation Procedures

Applicability: Rule 122 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superceded by a collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in Rule 122 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service Critical classes as covered in Volumes II, III and IV. If there is any conflict in the provisions of this Rule and relevant Charter Sections, the Charter language prevails.

Article I: Separation Procedures

Article II: Termination of Temporary Employee

Article III: Termination of Provisional Employee

Applicability: Article III, Rule 122, shall apply to employees in classes represented by the Transport Workers Union (TWU) - Locals 200 and 250A; except MTA Service-Critical classes. However, all definitions in Rule 122 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service Critical classes as covered in Volumes II, III and IV.

Article IV: Dismissal of Permanent Employee**Article V: Resignation - Services Unsatisfactory****Article VI: Absence from Duty Without Leave (Automatic Resignation)****Article VII: Request to Remove Non-Permanent Ban**

Applicability: Article VII, Rule 122, shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Rule 122

Employee Separation Procedures

Article I: Separation Procedures

Applicability: Rule 122 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in Rule 122 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service Critical classes as covered in Volume II, III and IV. If there is any conflict in the provisions of this Rule and relevant Charter Sections, the Charter language prevails.

Sec. 122.1 Rules of Procedure Governing Separation Hearings

122.1.1 This Article prescribes the procedures governing the separation of the following:

Except as otherwise noted, Section 122.1.1 shall apply only to employees in classes represented by the Transport Workers Union (TWU) - Locals 200 and 250A; excluding MTA Service-Critical classes.

1. Temporary employee from a list
2. Dismissal of permanent employee

122.1.2 This Article prescribes the procedures governing the separation of the following:

Except as otherwise noted, Section 122.1.2 shall apply only to employees in classes represented by the Transport Workers Union (TWU) - Locals 200 and 250A; excluding MTA Service-Critical classes.

1. Temporary employee from a list
2. Provisional employee
3. Dismissal of permanent employee

122.1.3 A notice of termination on the form prescribed by the Human Resources Director from the appointing officer to the employee detailing the specific reason(s) for the termination, shall serve as official notice of such termination. The notice of termination shall be sent by certified mail or personally delivered. Copies of the termination form must be filed in the Department of Human Resources.

Sec. 122.1 Rules of Procedure Governing Separation Hearings (cont.)

122.1.4 The notice of termination must include the following information:

1) The employee has the right to a hearing before the Civil Service Commission provided that a request for hearing is made in writing and is received by the Executive Officer within twenty (20) calendar days from the date of termination of appointment or from the date of mailing of the Notice of Termination whichever is later. In the event the 20th day falls on a non-business day, the deadline shall be extended to the close of business of the first (1st) business day following the 20th day.

2) The decision of the Civil Service Commission may affect any **future** employment with the City and County of San Francisco.

3) Representation by an attorney or authorized representative of the employee's choice at the inquiry;

4) Notification of date, time and place of inquiry a reasonable time in advance; and

5) Inspection by the employee's attorney or authorized representative of those records and materials on file with the Executive Officer which related to the termination.

122.1.5 Any interested party may request a continuance of the inquiry.

122.1.6 The stated reason(s) for the termination must be enumerated. Records of warnings, reprimands and previous suspensions, if applicable to the reasons for termination, must be attached to the termination form.

122.1.7 To the extent practicable, the departmental representative who has the most complete personal knowledge of the facts which constitute the basis for the termination shall appear when the matter is to be considered by the Commission. The matter will be heard in accordance with the procedures provided elsewhere in these Rules. Interested parties may record the inquiry if they provide the necessary equipment.

Sec. 122.2 Eligibility Status Pending Commission Action on Termination or Dismissal

Except as otherwise ordered by the Human Resources Director, pending action of the Commission on termination of any appointment or upon preferral of charges for dismissal, the name of the appointee shall be placed under waiver for all appointment(s) on any eligible list on which the person has standing and shall be otherwise ineligible for any employment in the City and County service.

Sec. 122.3 Effect of Commission Approval of Termination or Dismissal

Unless specifically ordered otherwise by the Commission, approval of termination or dismissal shall result in the cancellation of all current examination and eligibility status, and all **future** applications will require the approval of the Human Resources Director, after completion of one (1) year's satisfactory work experience outside the City and County service and by recommendation of the department head or Human Resources Director, the person shall be ineligible for **future** employment with the department from which separated.

Sec. 122.4 Effect of Failure to Request Commission Review of Termination or Dismissal

122.4.1 Failure to request a Commission review within the twenty (20) day period as provided elsewhere within this Rule shall result in the following actions:

1) The adoption of the departmental recommendation as approved by the Human Resources Director; or approval of the separation, if such action is appropriate; and/or

2) Dismissal from the City and County service; and/or

3) The cancellation of all current examination and eligibility status; and/or

4) All **future** applications shall be subject to the review and approval of the Human Resources Director after satisfactory completion of one (1) year's work experience outside the City and County service;

and/or

5) By recommendation of the department head or Human Resources Director, the separated employee may not be employed with the same department in the **future**.

122.4.2 This action shall be final and shall not be subject to reconsideration unless the person can present evidence in writing of being unable to communicate with the Commission within thirty (30) days of being able to so communicate. All requests for reconsideration shall be in writing and shall be processed in accordance with the procedure for reconsideration provided elsewhere in these Rules.

Rule 122

Employee Separation Procedures

Article II: Termination of Temporary Employee

Applicability: Rule 122 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in Rule 122 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service Critical classes as covered in Volume II, III and IV. If there is any conflict in the provisions of this Rule and relevant Charter Sections, the Charter language prevails.

Sec. 122.5 Procedure for Termination of Temporary Employee

122.5.1 A temporary employee may be terminated for cause by an appointing officer at any time. The notification and hearing procedure shall be in accordance with the provisions of this Rule.

122.5.2 The Commission shall take one or more of the following actions:

1) Declare the person dismissed from the service and remove the name of the person from the eligible list;

2) Order the name of the person removed from any other list or lists on which the person has eligibility;

3) Restrict **future** employment as it deems appropriate;

4) Return the name of the person to the eligible list from which appointed without restriction or under such conditions for further appointment as it deems appropriate. If the list from which the terminated employee was appointed has expired, the name of the employee may be placed on a reemployment register for the class for an additional period of eligibility of twelve (12) months under such conditions for further appointment as the Commission deems appropriate.

Rule 122

Employee Separation Procedures

Article III: Termination of Provisional Employee

Applicability: Article III, Rule 122, shall apply to employees in classes represented by the Transport Workers Union (TWU) - Locals 200 and 250A; except MTA Service-Critical classes. However, all definitions in Rule 122 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service Critical classes as covered in Volumes II, III and IV.

Sec. 122.6 **Procedure for Termination of Provisional Employee**

122.6.1 A provisional employee may be terminated for good cause by an appointing officer at any time with the approval of the Commission. The notification and hearing procedure shall be in accordance with the provisions of this Rule.

122.6.2 The Commission shall take one or more of the following actions:

- 1) Approve the termination and declare the person dismissed from the service.
- 2) Order the name of the person removed from any regular eligible list or lists on which the person may have standing.
- 3) Restrict **future** employment as it deems appropriate.
- 4) Disapprove the termination and reinstate the person to the department.

Rule 122

Employee Separation Procedures

Article IV: Dismissal of Permanent Employee

Applicability: Rule 122 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in Rule 122 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service Critical classes as covered in Volumes II, III and IV. If there is any conflict in the provisions of this Rule and relevant Charter Sections, the Charter language prevails.

Sec. 122.7 **Procedure for Dismissal of Regular Permanent Employee**

122.7.1 Dismissal of Permanent Employee

A permanent employee who has completed the probationary period may be dismissed for cause upon written charges and after having an opportunity to be heard in her/his own defense.

122.7.2 Notification of Time and Place of Hearing

When the charges are made, the appointing officer shall notify the person in writing of the time and place where the charges will be heard by mailing such statement via certified mail to the employee's last known address. Such hearing shall not be held within five (5) working days of the date on which the notice is mailed. The employee may be represented by counsel or other representatives of the employee's choice.

122.7.3 Hearing Officer - Sources

The hearing itself, as required by Charter, shall be conducted by a hearing officer under contract to the appointing officer chosen as follows in each case: From organizations such as the American Arbitration Association or the State Conciliation Service which customarily provide hearing officers; or from a list of qualified hearing officers certified by the Civil Service Commission, which shall be kept current and contain at all times at least three (3) names.

Sec. 122.7 Procedure for Dismissal of Regular Permanent Employee (cont.)**122.7.4 Hearing Officer - Method of Selection**

The Civil Service Commission shall certify its list of hearing officers by the following method:

- 1) The Commission shall cause to be published in a newspaper of general circulation an announcement of openings for hearing officers. This announcement shall run either for a period of five (5) working days or for two (2) weekends at the discretion of the Civil Service Commission;
- 2) The Commission shall include in its list only such applicants as to satisfy the following criteria: have at least one (1) year of experience in the conduct of judicial hearings in the capacity of a hearing officer and have experience in the resolution of disputes involving the interpretation of labor-management contracts;
- 3) The Executive Officer shall post the list of panel members so selected for a period of five (5) working days during which time employees, public employee organizations or City departments may seek to demonstrate in writing that any member of the panel is unacceptable. The Executive Officer shall review such challenges and shall determine whether on the basis of the challenge the individual should be eliminated from the approved list.

122.7.5 Hearing Officer - Challenge of Employee

The employee may challenge the competence of the hearing officer who is scheduled to hear the employee's case on the basis that the hearing officer is in some demonstrable manner biased or prejudiced against the employee and that, therefore, the employee will not be afforded a fair hearing. The challenge must be made in the following manner:

- 1) The challenge must be by written affidavit;
- 2) The challenge must be received by the appointing officer at least twenty four (24) hours prior to the commencement of the hearing;

Sec. 122.7 Procedure for Dismissal of Regular Permanent Employees (cont.)**122.7.5 Hearing Officer - Challenge of Employee (cont.)**

3) Should the challenge cause the department to incur expense through the cancellation of the hearing officer, shorthand reporter, etc., such expenses shall be borne by the employee in keeping with the section on costs below. If the employee has been placed on suspension pending the hearing, any delay in the hearing occasioned through challenge or replacement of a hearing officer shall be considered a delay of the hearing by act of the accused employee and shall extend indefinitely the thirty (30)-day period referred to in Charter Section A8.341;

4) In the event that the appointing officer shall determine that the hearing officer cannot afford the employee a fair hearing, the appointing officer shall immediately make arrangement to obtain the services of another hearing officer in accordance with the methods stated above.

122.7.6 Hearing Officer - Evidence to be Considered

The hearing officer shall decide the case on the basis of the evidence presented. The hearing officer shall determine whether the accused employee has adhered to the applicable orders, Rules, regulations, ordinances, Charter provisions, or applicable sections of any memoranda of agreement or memoranda of understanding. The hearing officer shall be prohibited from considering the relative merits or social desirability of such orders, Rules, regulations, ordinances, Charter provisions or sections of memoranda of agreement or memoranda of understanding as may be applicable to the case.

122.7.7 Hearing Officer - Decision

Within five (5) working days of the close of the hearing, unless specifically exempted for good cause by the appointing officer, the hearing officer shall notify the appointing officer in writing of a decision in the case. The hearing officer shall be limited to the following options in deciding the case:

1) The hearing officer may exonerate the employee in which case the record may, at the discretion of the hearing officer, be expunged and the employee may receive back pay for all time lost;

Sec. 122.7 Procedure for Dismissal of Regular Permanent Employee (cont.)**122.7.7 Hearing Officer - Decision (cont.)**

2) The hearing officer may find the employee guilty as charged, in which case the following provisions apply:

§ the hearing officer may order the employee returned to work but without back pay for any time not worked between the time charges were made and the time of the hearing or the time the hearing officer renders a decision, whichever is longer;

§ the hearing officer may suspend the employee without pay but may not at her/his discretion, order back pay for any periods not worked prior to the hearing; or

§ the hearing officer may dismiss the employee.

122.7.8 Notification of Decision of Hearing Officer

Within five (5) working days after the appointing officer receives written notification of the decision of the hearing officer, the appointing officer shall inform the employee in writing of the decision of the hearing officer and shall, by copies of this correspondence and the written notification from the hearing officer, inform the Civil Service Commission of the decision and the action taken.

122.7.9 Costs

1) The department bringing charges against an employee shall pay all fees for hearing officers and court reporters, and, if required, the cost of preparation of the transcript with the following exception:

2) If additional costs are incurred as a result of any request of the employee (such as costs occasioned by the untimely postponement of a hearing, challenges of hearing officer, etc.), all such additional costs, such as cancellation fees or fees when court reporters cannot be notified of the cancellation of a hearing within their established and customary limits, shall be borne by the employee.

Sec. 122.8 Procedure for Hearing on Charges Against an Employee When the Appointing Officer Neglects or Refuses to Act

122.8.1 When the appointing officer neglects or refuses to act pertaining to the removal of any employee subject to the civil service provisions of the Charter, the Commission may hear and determine any charge filed by

a citizen, or by any member of or by an authorized agent of the Commission. In rendering its decision, the Commission shall determine the charges and may exonerate, suspend or dismiss the accused employee in accordance with the provisions of Charter Section A8.341.

122.8.2 The appointing officer or the departmental representative shall appear when the matter is to be considered. The matter will be heard in accordance with this procedure provided elsewhere in these Rules.

Rule 122

Employee Separation Procedures

Article V: Resignation - Services Unsatisfactory

Applicability: Rule 122 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in Rule 122 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service Critical classes as covered in Volumes II, III and IV. If there is any conflict in the provisions of this Rule and relevant Charter Sections, the Charter language prevails.

Sec. 122.9 Procedure for Review of Resignation - Services Unsatisfactory

122.9.1 Notice of Proposed Action

If the services of a resignee are to be designated as unsatisfactory, the appointing officer or designated representative shall notify the resignee of intention to so certify the resignation. The resignee shall be informed of the reasons for this determination and shall be offered an opportunity for review by the appointing officer or designated representative.

122.9.2 Action by Appointing Officer

As a result of review, if such review is requested by the resignee, the appointing officer may amend or sustain the certification of services.

122.9.3 Notification to Employee

If the appointing officer amends the resignation, the resignee shall immediately be notified by copy of the resignation form with services clearly marked satisfactory. If the appointing officer sustains the original

determination, the appointing officer shall immediately notify the resignee on the separation form prescribed by the Department of Human Resources.

122.9.4 Report Requirement

A resignation certified by the appointing officer as services unsatisfactory shall be accompanied with a statement of the reasons for this action and shall contain a statement that the notification and review procedure outlined above was completed.

Sec. 122.9 Procedure for Review of Resignation - Services Unsatisfactory (cont.)

122.9.5 Commission Review

The Commission shall consider the resignations of persons whose services have been designated as unsatisfactory provided that a request for review is made in writing and is received in the Commission office within twenty (20) calendar days of the date of mailing of the Notice of Separation designating the services as unsatisfactory. In the event the 20th day falls on a non-business day, the deadline shall be extended to the close of business on the first (1st) business day following the 20th day. The Commission shall take one or more of the following actions:

- 1) Accept the resignation as certified;
- 2) Remove the name of the resignee from other eligible lists on which the eligible's name appears;
- 3) Restrict participation in **future** examinations as it deems just;
- 4) Restrict **future** employment as it deems just;
- 5) Accept the resignation as certified and order that **future** employment be without restriction including the right to request reappointment; or
- 6) Remand the resignation to the appointing officer for reconsideration.

122.9.6 Failure to Request Review

1) Failure to request a Commission review within the twenty (20)-day period provided above shall result in the adoption of the departmental recommendation as approved by the Human Resources Director; or the cancellation of all current examination and eligibility status; and all **future** applications shall be subject to the review and approval of the Human Resources Director after satisfactory completion of one (1) year's work experience outside City and County service.

2) This action shall be final and shall not be subject to reconsideration unless the person can present evidence in writing of being unable to communicate with the Commission within thirty (30) days of being able to so communicate. All requests for reconsideration shall be in writing and shall be processed in accordance with the procedure for reconsideration provided elsewhere in these Rules.

Sec. 122.9 Procedure for Review of Resignation - Services Unsatisfactory (cont.)

122.9.7 Hearing Procedures

Hearings pursuant to this Rule shall be conducted in accordance with the procedures provided elsewhere in these Rules.

122.9.8 Waiver of Employment

Pending final action, the resignee shall be ineligible for all employment.

Rule 122

Employee Separation Procedures

Article VI: Absence from Duty Without Leave

Applicability: Rule 122 shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes; or as noted or as specifically excluded, or except as may be superseded by a collective bargaining agreement for those employees subject to Charter Section 8.409. However, all definitions in Rule 122 are applicable to employees in all classes; excluding only the Uniformed Ranks of the Police and Fire Departments and the MTA Service Critical classes as covered in Volumes

II, III and IV. If there is any conflict in the provisions of this Rule and relevant Charter Sections, the Charter language prevails.

Sec. 122.10 **When Five Days or Less**

Absence from duty without proper authorization for any period of time up to and including five (5) or less working days shall be cause for disciplinary action by the appointing officer.

Sec. 122.11 **When Over Five Days - Automatic Resignation**

122.11.1 Absence from duty without proper authorization in excess of five (5) continuous working days shall constitute abandonment of the position and shall be reported to the Department of Human Resources and recorded as an automatic resignation. The appointing officer shall notify the employee on the form prescribed by the Human Resources Director. The employee shall be notified by certified mail.

122.11.2 The automatic resignation shall be subject to appeal to the Commission, if so requested by the person in writing, within fifteen (15) calendar days of the mailing date of the notice of automatic resignation. The fifteen (15) days includes the date on which the notice was mailed. The Commission shall hear such appeal. The decision of the Commission shall be final and not be reconsidered.

122.11.3 Failure to appeal within the fifteen (15) day period shall result in the adoption of the recommendation of the department head as approved by the Human Resources Director, or the cancellation of all current examination and eligibility status; the review and approval of the Human Resources Director, of all **future** applications after satisfactory completion of one (1) year's work experience outside the City and County service.

Sec. 122.11 **When Over Five Days - Automatic Resignation (cont.)**

122.11.4 If the person can present evidence in writing of being unable to communicate with the appointing officer within thirty (30) calendar days of being able to so communicate, the automatic resignation may then be subject to reconsideration by the Commission. All requests for reconsideration will be in writing and will be processed in accordance with the procedures for reconsideration provided elsewhere in these Rules.

122.11.5 Pending final action under this Rule, an individual under automatic resignation shall be placed under waiver on all eligible lists on which the individual's name appears.

122.11.6 In considering the appeal of an automatic resignation, the Commission shall take one or more of the following actions:

- 1) deny the appeal and approve the resignation;
- 2) order the name of the person removed from any other eligible list or lists on which the person's name appears;
- 3) restrict participation in further examinations as it sees fit;
- 4) return the name to the eligible list under such conditions for further appointment as it deem appropriate; or
- 5) disapprove the resignation.

Sec. 122.12 **Hearing Procedures**

Hearings conducted under this Rule shall be conducted in accordance with the procedures provided elsewhere in these Rules.

Rule 122

Employee Separation Procedures

Article VII: Request to Remove Non-Permanent Ban

Applicability: Article VII, Rule 122, shall apply to officers and employees in all classes, except the Uniformed Ranks of the Police and Fire Departments and MTA Service-Critical classes.

Sec. 122.13 **Those Individuals Covered Under Rule 122, Article VII**

Former employees of the City and County of San Francisco who were banned from **future** employment in one or more department(s) in accordance with the provisions of Civil Service Rule 122 may request reconsideration of any non-permanent ban if it has been five (5) or more years since the ban was imposed. For the purpose of this Rule, any Citywide ban imposed before April 21, 2014 is considered a permanent ban not subject to reconsideration.

Sec. 122.14 Reconsideration

Individuals as defined in Section 122.13 may submit a written request to the Human Resources Director for reconsideration of a ban on their **future** employment. It shall be the responsibility of the requesting individual to submit to the Human Resources Director all available documentation and information regarding the separation. The individual must also provide reasons for the request for reconsideration of the employment restriction.

Sec. 122.15 Action of the Human Resources Director

The Human Resources Director shall consider the request and the recommendation from the affected department(s). The Human Resources Director may request additional information deemed necessary to make a recommendation to the Civil Service Commission. The decision of the Civil Service Commission is final.

Exhibit C

Employee Handbook Business
Use Policy

Use of City and County Property for Business Purposes Only

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited. City resources include, but are not limited to, facilities, equipment, devices, telephones, computers, copier, fax machine, e-mail, internet access, supplies and any time for which you are receiving compensation from the City. Inappropriate uses of City resources include, but are not limited to: online gambling; viewing sports events online; playing games, streaming video or music on a work computer; viewing or distributing materials that are not related to City business or that are sexually explicit; and frequent talking on a personal cell phone or texting during work hours.

Your use of the internet may be monitored by departmental Information Technology staff or other City staff as necessary at any time. This may include monitoring the amount of time you spend on the Internet, the Internet websites you visit and/or the content of the information you send, receive and view using the internet. Monitoring may occur either routinely or as a result of a concern that you may be using the Internet inappropriately, and may occur at any time and without warning or notice.

Further, the City's E-Mail system may only be used for authorized official communications. The City may also monitor your E-Mail usage at any time and without warning or notice.

Inappropriate use of City resources may result in discipline, up to and including termination of employment.

Work Site Security

To prevent and discourage unauthorized access to your work site, do not leave your office area unattended. Do not prop open doors or windows that are normally kept locked. Lock all office doors after business hours or when you leave. Prevent and discourage theft by securing your valuables.

Work-site keys and passes may not be shared, may not be duplicated without permission and must be returned upon separation.

Computers and Data Information Systems

City employees with access to computer files and records may not release or disseminate information without authorization. The release or dissemination of such material may be grounds for disciplinary action and termination. Passwords exist for the protection of City documents and information. You are required to provide your computer password to your supervisor or other person designated by your department. You may not share your password with any unauthorized persons.

Because City computers may be accessed by other authorized users, do not store on your work computer any information you do not intend to share with others.

The use of unauthorized programs and copies of commercial software packages is prohibited. Computer programs utilized by the City may not be duplicated or altered for personal use.

Exhibit D

2016 Larry Stringer PW Vehicle
Use Policy



Edwin M. Lee
Mayor

Mohammed Nuru
Director

Larry Stringer
Deputy Director

Office of the Deputy Director
for Operations

2323 Cesar Chavez St.
San Francisco, CA 94124
tel 415-695-2003

sfpublicworks.org
facebook.com/sfpublicworks
twitter.com/sfpublicworks

March 18, 2016

To: All Public Works Operations Employees

From: Larry Stringer, Deputy Director for Operations

LS

RE: Appropriate Use of City Vehicles

It has come to my attention that the Department's policies and procedures regarding the appropriate use of City vehicles is not being followed. This policy is being re-issued as a reminder that City vehicles are for official City business use only. Employees are not to use a City vehicle for personal errands.

In addition, please observe the following requirements:

1. All keys to City vehicles must be checked out of the Key Watcher System at the beginning of each shift and returned at the end of each shift. No one is to take the keys to a City vehicle home with them for any reason. Employees are not permitted to take any City equipment home.
2. Seat belts must be worn at all times when operating a City vehicle. Smoking is not permitted in City vehicles or on the premises at the Yard.
3. City trucks are not to be parked in any parking lot unless they are on official City business. They are to be parked legally on the street.
4. City vehicles should not be in the employee parking lot, and should not be double parked on Kansas Street in front of the Yard. Personal vehicles are not allowed to enter or park at the Yard unless with prior approval.
5. Vests are to be worn and zipped up at all times when operating a City vehicle. They need to be taken off during break or lunch time.
6. Parking in a red zone, blue zone, bus zone, or by a fire hydrant is NOT allowed. Also, City vehicles are not permitted to block a crosswalk or double park. Text or talk on cell phones while driving is illegal and also violates the City's and department's policy for the use of cell phones.
7. City vehicles that are scheduled to travel outside of city limits are required to call the Radio Room and state where they are going in the purpose of the travel.
8. All field employees are required to take coffee and lunch breaks within their assigned areas if you must leave your area for any reason, you must contact your supervisor for approval before hand. City vehicles must remain in their assigned districts.

9. When operating a City vehicle, you must comply with all state laws and Public Works/GSA's vehicle policies. You will be held responsible for any moving and or parking violations issue to you and/or your assigned City vehicle.
10. Vehicle accidents require police reports and it must be reported immediately to the Radio Room and your Supervisor. Any injuries must be reported no later than the end of the shift on the day they occur.
11. Vehicles are not to be left idling. Remove keys when exiting vehicle.
12. No valuable should be left visible in the cab of vehicle when exiting or parking vehicle.

Anyone observed violating these policies will be subject to disciplinary action. Your attention and cooperation with these policies is required.

Exhibit E

Employee Handbook City
Vehicle Use Policy

Catastrophic Event While on Duty: Should a catastrophic event occur while you are on duty, report immediately to your supervisor or designated areas for assignment.

Catastrophic Event While off Duty: Should a catastrophic event occur while you are off duty, you should ensure the safety of your family and follow your department's instructions. In the event that phone lines are down, you are required to listen to the radio for any reporting instructions.

In the event of an emergency, the City may contact you via its two-way emergency communication system on your home phone, cell phone, work phone, and/or work email. Please be aware that the system uses an electronic communication, so you may think it is an unsolicited "robo-call." Do NOT hang up; you are required to listen to the entire message, follow the instructions and report for your emergency assignment if so directed.

Use of Public Transportation

City employees are encouraged to use public transit—not only for the journey between home and work, but also during the course of the business day. San Francisco Municipal Transportation Agency offers frequent service in the City on its buses, streetcars and cable cars. Although a City automobile may be available for your use for work-related travel, congestion and parking usually make public transportation a more convenient way to travel.

Call the San Francisco Municipal Transportation Agency Telephone Information Center at (415) 673-MUNI for the latest information on fares and schedules, or call (415) 923-6336 for computerized schedule information.

City Vehicles

City vehicles are a resource whose use is limited by law. Like all City resources, City vehicles are to be used for City business only. Except where explicitly authorized to do so, employees may not take City vehicles home. City vehicles may not be used for personal business. Any citations you receive while using a City vehicle are your responsibility. Employees who violate the Vehicle Code or any other applicable laws and City policies in City vehicles may be subject to disciplinary action, up to and including termination.

Improving the Quality of Your Workplace

Be conscientious about the public's and clients' perceptions of your activities and your work environment. Do your part in maintaining a clean and orderly workspace, particularly if you have interaction with the public.

Keep in mind how your actions may be interpreted by the public. For example, if you are on break, a member of the public may not know this. Therefore, you should avoid reading newspapers or magazines at your desk or eating your lunch in a high visibility area. Keep non-business visitors and personal visiting to an absolute minimum. Improve the quality of your workplace by striving to maintain high standards and providing the best service possible.

-- END --

Exhibit F

Santiago Notice of 1-day
Suspension



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

Human Resources Administration
1155 Market Street, 4th Floor
San Francisco, CA 94103 - 1523
Main: (415) 554-6000
Fax1: (415) 554-6025
Fax2: (415) 554-6042

Via Email and Hand Delivery

Prjas3@gmail.com

August 20, 2019

Jose Santiago



Re: Notice of Disciplinary Suspension Date

Dear Mr. Santiago:

In accordance with the attached *Skelly* Decision approved by Mohammed Nuru, Director, San Francisco Public Works, please be advised that you are being suspended without pay for 1 work day. The date of your suspension will be as follows:

- **Wednesday, August 28, 2019.**

You are not permitted to return to work during the suspension nor are you permitted to work any overtime during the pay period in which the suspension is served.

Should you have any questions, please feel free to contact Jason Jimenez, Senior Employee and Labor Relations Analyst at 415-695-2033.

Sincerely,

Svetlana Vaksberg
Employee and Labor Relations Division Director

Enclosure: *Skelly* Decision for a 1 Day Suspension

cc: Carla Short, Superintendent, Bureau of Urban Forestry,
San Francisco Public Works
Jason Jimenez, Senior Employee and Labor Relations Analyst,
General Services Agency-Human Resources
Official Employee Personnel File – Santiago, Jose

Exhibit G

Santiago Notice of 10-day
Suspension



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

Human Resources
1155 Market Street, 4th Floor
San Francisco, CA 94103 - 1523
Main: (415) 554-6000
Fax1: (415) 554-6025
Fax2: (415) 554-6042

Via Hand Delivery

May 27, 2020

Jose Santiago
[REDACTED]
[REDACTED]

Re: Notice of Disciplinary Suspension Dates

Dear Mr. Santiago:

In accordance with the attached *Skelly* Decision approved by Alaric Degrafinried, Acting Director, San Francisco Public Works, which is attached, you will be suspended without pay for ten (10) work days. The dates of your suspension are as follows:

- **Wednesday, June 3, 2020 to Tuesday, June 16, 2020**

You are not allowed to come to work on the days you are suspended nor are you permitted to work overtime during the pay periods in which the suspension is served. You are expected to return to work on Wednesday, June 17, 2020.

Should you have any questions, please feel free to contact Jason Jimenez, Senior Employee and Labor Relations Analyst, City Administrator Human Resources (CAHR) at 415-695-2033.

Sincerely,

A handwritten signature in blue ink that reads "Svetlana Vaksberg".

Svetlana Vaksberg
Employee and Labor Relations Division Director

Encl.: *Skelly* Decision

cc: Carla Short, Superintendent, Bureau of Urban Forestry, San Francisco Public Works
Jason Jimenez, Senior Employee and Labor Relations Analyst, CAHR
Payroll, CAHR
Official Employee Personnel File

Exhibit H

Santiago Investigatory Report



INVESTIGATIVE REPORT

DS
DD

TO: DiJaida Durden, Deputy Director for Operations, San Francisco Public Works

THROUGH: Carla Short, Superintendent, Bureau of Urban Forestry, San Francisco Public Works *CS*

THROUGH: Svetlana Vaksberg, Employee and Labor Relations Division Director, City Administrator Human Resources *SV*

FROM: Jason Jimenez, Senior Employee and Labor Relations Analyst, City Administrator Human Resources *JJ*

DATE: July 26, 2021

SUBJECT: Whistleblower Complaint #BHL46g84
Jose Santiago, 3417 Gardener, Bureau of Urban Forestry, San Francisco Public Works

I. BACKGROUND

On August 31, 2013, San Francisco Public Works (Department) hired Jose Santiago to a 3417 Gardener, Permanent Civil Service (PCS) position. He is assigned to Bureau of Urban Forestry (BUF). Santiago performs maintenance and landscaping renovation tasks to care for the City's athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas. (**Exhibit 1**)

A. Prior Discipline

In 2020, Santiago received a 10-day suspension for misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area, failing to notify supervisor after completing work early; violation of the City's Attendance and Punctuality Policy; and dishonesty. These charges were based on his misconduct as follows: (1) On September 24, 2019, he and his co-worker failed to report to their assigned work location and spent 79 continuous minutes driving to Golden Gate Park, which is 3.8 miles away from their assigned work location; (2) On September 25, 2019, he and the same co-worker arrived late to their assigned work location and could not account for their time; and (3) on September 25, 2019, after completing their assignment, he and his co-worker drove around in the City vehicle for 96 continuous minutes; the vehicle was stopped ten miles away from their assigned work location.

Santiago's dishonesty; misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area; and violation of City's Attendance and Punctuality Policy has continued. (**Exhibit 13**)

B. December 1, 2020 Whistleblower Complaint

The Department received a Whistleblower Complaint from the City's Whistleblower Program that on December 1, 2021 at approximately 12:15 p.m., a Department employee (Hispanic with shaved head) dropped off 20 rolls of sod owned by the City to a private residence at 370 Naples Street driving a white twin cab pick-up vehicle 450-608. (**Exhibit 2**) The Whistleblower program provided the GPS report for 450-608. (**Exhibit 3**) GPS showed the vehicle stopped at the following locations:

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
Sloat Blvd at Sunset Avenue	14 minutes	11:29 a.m. to 11:50 a.m. (21 min)
377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

On February 25, 2021, City Administrator Human Resources (CAHR) was asked to further investigate the complaint.

II. INVESTIGATION

A. RECORDS AND INFORMATION

In addition to the GPS records, the following records were reviewed:

1. Keywatcher

The Department's Keywatcher report identifies the names of employees who take and return City vehicle keys and when the keys were taken. The December 1, 2020 Keywatcher report for City vehicle 450-608 identifies Douglas Reed, 3422 Park Section Supervisor and Santiago's supervisor as taking out the keys at 4:49 a.m. and Santiago as returning the keys to the vehicle at 12:52 p.m. (**Exhibit 4**). Due to COVID-19 safety protocols, the Department implemented safety procedures whereby supervisors check out keys on behalf of their employees to reduce the number of people gathering at the key watch system.

2. GPS Records

GPS records show that Santiago drove City vehicle 450-608 to Sloat Blvd. and Sunset Avenue where the Department stored sod, where he remained for 21 minutes. **(Exhibit 14)** Thereafter, he drove the City vehicle to 377 Naples Street where he remained for 11 minutes.

3. Payroll and Time Records

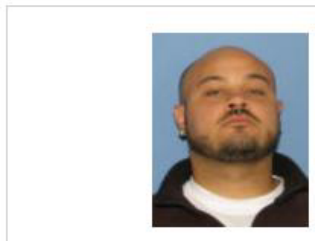
On December 1, 2020, Santiago reported working 6 hours and was AWOL for 2 hours. His work schedule was supposed to be at 5:00 a.m. through 1:30 p.m. but he actually started working at 7:06 a.m. **(Exhibit 11)**

4. Cost of Sod

The City paid approximately \$4.25 per roll for the sod so 20 rolls of sod would cost approximately \$85.00.

5. Santiago's Picture from the City's PeopleSoft Records

Jose A Santiago III



B. WITNESS INTERVIEWS

1. Douglas Reed

Douglas Reed, 3422 Park Section Supervisor, BUF, said that Santiago's work schedule is 5:00 a.m. to 1:30 p.m. and that on December 1, 2020, Santiago was late to work and did not notify the Department so Santiago was marked AWOL for 2 hours that day. When told that Santiago thought he started work at 7:00 a.m., Reed said that Santiago was mistaken and that Santiago starts work at 5:00 a.m. due to the Department's COVID procedures. Reed said that on December 1, 2020, again due to the Department's COVID procedures to limit the number of people at the Keywatcher to pick up vehicle keys, he signed out the vehicle keys of his staff and gave the keys to the employees. Santiago was late to work and therefore, Reed left Santiago's vehicle keys in vehicle 450-608 so that Santiago could drive the vehicle when he reported to work.

Santiago's December 1, 2020 work assignment was to work with Amy Craven, 3422 Park Section Supervisor at Junipero Serra Boulevard near Ocean Avenue. When asked why

Santiago was at the five other non-work locations, Reed said that Santiago's only assigned work area that day was at Junipero Serra Boulevard and that he was not authorized to be at any other location as recorded in GPS records.

Reed said that in late November 2020, sod was being stored at the Sloat/Sunset shack. He said by mid-December 2020, the sod was going bad, dying, and not usable so he instructed Angel Gonzales and Phil Roberts, 3417 Gardeners to take the sod to the dump. Reed said he never instructed employees to take sod for non-City use.

2. The following individuals who worked with Santiago in the same crew were interviewed:

a. Leandra Butler

Leandra Butler, 3417 Gardener, confirmed that Reed ordered too much sod for the Balceta Triangle project. She said the sod was going brown and Reed told the crew to take the sod to the dump (Waste Disposal at 501 Tunnel Avenue). She said that Gonzales took the sod to the dump. Butler did not hear Reed tell staff that they can take sod. She did not see anyone take the sod.

b. Kristopher Fincher

Kristopher Fincher, 3417 Gardener, confirmed Reed over ordered sod which was sitting out at Sloat/Sunset shack and it was going brown. Fincher did not see anyone take the sod. Fincher said Reed instructed Gonzales and Roberts, to take the sod to the dump. Fincher did not hear Reed tell staff that they can take sod.

c. Jerry Gaines

Jerry Gaines, 3417 Gardener, said that Reed ordered too much sod for the Balceta Triangle project and that the extra sod was being stored at Sloat/Sunset shack and it was going bad. He did not hear Reed tell the staff to take the sod if they want because the sod was going bad and he did not see anyone take sod.

d. Angel Gonzales

Angel Gonzales, 3417 Gardener, said there was a lot of sod that was on pallets and dying at Sloat/Sunset shack. Gonzales confirmed that Reed told him to take the sod to the dump and he made three trips to the dump to get rid of the sod. Gonzales said he did not see anyone take the sod and that Reed did not tell staff that they can take the sod.

e. Phil Roberts

Phil Roberts, 3417 Gardener, said sod was being wasted and not used at Sloat/Sunset shack. Reed told him to take the sod to the dump. Roberts did not see anyone take the sod for personal use. He also did not hear Reed tell staff that they can take the sod.

C. SANTIAGO'S INTERVIEW

On May 13, 2021, a Weingarten interview was conducted with Santiago. Daniel Ferrick, General Laborer, with San Francisco Public Works and Shop Steward with Local 261, represented Santiago. From my observation, Santiago is a bald Hispanic, around 5'8" with a medium build. Carla Short, BUF Superintendent also attended the interview.

Santiago said he has been a Gardener for 12 years. He works Monday to Friday from 7:00 a.m. to 3:30 p.m. with his 15-minute breaks at around 9:30 a.m. and 2:00 p.m. and his lunch break at around 11:30 a.m.

1. Leaving Assigned Work Area

Santiago said that the policy for leaving an assigned work area is that employees must notify their supervisor when leaving their work area. He said there are occasions when employees have to leave their work area to help out employees in other work areas but that the supervisor must be aware that the employee is leaving their assigned work area.

2. December 1, 2020

When asked why on December 1, 2020, the City vehicle he was assigned to was parked at 4228 Ocean Avenue (Lakeshore Plaza) from 7:51 a.m. to 8:14 a.m. (23 minutes), Santiago kept saying he does not remember why. He also said if he was there, then Reed did not give him any assignments that day.

When asked why his City vehicle was parked at Sloat Boulevard at Sunset Avenue (Sloat/Sunset) from 11:29 a.m. to 11:50 a.m. (21 minutes), Santiago said he does not remember but that location is where the BUF shack is located and BUF vehicles are there sitting for hours while they work or are on break. He said if he was at Sloat/Sunset, he was probably doing the same thing.

When asked why his City vehicle was parked at 377 Naples Street from 12:12 p.m. to 12:23 p.m. (11 minutes), Santiago said he does not remember but that Don Chuy's burrito restaurant is on Naples and Excelsior and that he probably parked at Naples Street to go to the restaurant because it was lunch time.

When asked why his City vehicle was parked at 601 Excelsior Avenue from 12:25 p.m. to 12:31 p.m. (6 minutes), Santiago said he does not remember but again said that Don Chuy's burrito restaurant is nearby on Naples and Excelsior. He said he must have been done working for the day and that he cannot help it if Reed does not give him enough work to do and that Reed needs to give him more work if he is roaming around the City. Santiago said

he has been doing the job for 12 years and he gets his jobs done quickly. When asked if he calls Reed to inform him he is done with the job, he said, "Yes" and that Reed rarely answers the phone.

3. Sod

When asked if he drove to Naples Street to drop off sod at a private residence, Santiago said, "No." When shown a photo of the private residence on Naples Street and if he dropped off sod at the residence, again Santiago denied the allegation.

When asked to respond to the Whistleblower complaint that a person driving a City vehicle that was assigned to Santiago was witnessed dropping off 20 rolls of sod at a private residence on Naples Street, Santiago again denied the allegation. He said, "Reed told the crew he was going to get rid of the sod. He ordered too much sod that was dying. He told people to take the sod if they wanted it. He said the sod was going to go to waste so people can take it if they want it. There was a ton of sod and it was turning yellow and going bad."

Santiago was asked if he ever talked to his co-workers about making money off of the City's sod. Santiago kept saying, "No." He then said, "I don't see the issue if Reed is telling us to take sod. People took it. Reed told people to take the sod to get rid of it. He told the crew, if they want it, they can take some. He ordered too much sod and it was dying."

III. FINDINGS AND ANALYSIS

Based on the information above, it is evident that Santiago continues to be dishonest; misuse City time and resources; violates the Department Policy and Procedures regarding leaving his assigned work area; violates the City's City Vehicles Policy, Citywide Vehicle Use Policy, and Department's City Vehicle Use Policy; and violates the City's Attendance and Punctuality Policy.

A. Santiago is Not Credible and Dishonest

Santiago was found to be dishonest and not credible for the following reasons:

1. Santiago denied that on December 1, 2020 at approximately 12:15 p.m., he dropped off 20 rolls of sod at 370 Naples Street in City vehicle 450-608. However, it is undisputed that Santiago worked on December 1, 2020, was assigned to City vehicle 450-608, and that GPS records confirm that City vehicle 450-608 drove to Sloat and Sunset (where sod was stored), and then drove to 377 Naples Street. Moreover, the individual who made the complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify Santiago as a Hispanic and he has a shaved head.
2. Santiago alleged that Reed said the sod was going to go to waste and told staff to take the leftover sod if they wanted. All five witnesses interviewed from the crew

said that they did not hear Reed tell staff that they can take the sod. Rather, they heard Reed tell Gonzales and Roberts to take the sod to the dump. Therefore, it is more likely than not that Santiago was dishonest and Reed did not tell staff that they can take the sod.

B. Misuse of City Time and Resources

The City’s Use of City and County Property for Business Purposes Only Policy (**Exhibit 5**) contained in the City’s Employee Handbook states in relevant part:

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited.

On December 1, 2020, Santiago misused City resources when he took sod, which is City property, without approval, and dropped off 20 rolls of sod to a private residence at 370 Naples Street. GPS records confirm that Santiago drove to the location where the Department’s sod was stored and was there from 11:29 a.m. to 11:50 a.m. and then from there he drove to 370 Naples Street, where he remained from 12:12 p.m. to 12:23 p.m. Moreover, the Whistleblower complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify Santiago as a Hispanic and he has a shaved head.

Additionally, on December 1, 2020, Santiago reported late to work by 2 hours, he was supposed to start work at 5:00 a.m. but did not start officially working until he started driving City vehicle 450-608 at 7:06 a.m.

From 7:06 a.m. to 8:14 a.m., Santiago misused City time and resources when he was not at his assigned work location and instead drove and parked at one non-work location at 4228 Ocean Avenue. His work assignment was at Junipero Serra Boulevard at Ocean Avenue. GPS records show that he arrived at that work location at 8:25 a.m. and that the vehicle was parked there for 2 hours and 1 minute. Thereafter, he misused City time and resources again when he was not at his assigned work location and instead drove and parked at four more non-work locations.

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
Sloat Blvd at Sunset Avenue	14 minutes	11:29 a.m. to 11:50 a.m. (21 min)
377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

Since Santiago was AWOL for two hours (from 5:00 a.m. to 7:00 a.m.) and was at his assigned work area (Junipero Serra Blvd) for only two hours, he misused four hours of City time that day.

C. Violation of Department Policy and Procedures (Leaving Assigned Work Area)

The March 16, 2016 Appropriate Use of City Vehicles policy memo (**Exhibit 6**) from Larry Stringer, former Deputy Director for Operations states in relevant part:

All field employees are required to take coffee and lunch breaks within their assigned areas if you must leave your area for any reason, you must contact your supervisor for approval before hand. City vehicles must remain in their assigned districts.

As discussed above, on December 1, 2020, Santiago drove to and parked his City vehicle at five different locations which were outside of his assigned work area that day.

Santiago did not notify his supervisor that he would stop at those five locations that are not his assigned work areas. There was also no record of any service orders or special projects to be fulfilled at those locations that day, thus Santiago was in violation of Department policy for leaving his work area without supervisor authorization.

D. Violation of City's City Vehicles Policy, the Citywide Vehicle Use Policy, and the Department's City Vehicle Use Policy.

The City's Vehicles Policy (**Exhibit 7**) contained in the City's Employee Handbook states in relevant part:

Like all City resources, City vehicles are to be used for City business only. City vehicles may not be used for personal business. Employees who violate the Vehicle Code or any other applicable laws and City policies in City vehicles may be subject to disciplinary action, up to and including termination.

The Citywide Vehicle Use Policy (**Exhibit 12**) states in relevant part:

Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of City business.

The November 2, 2017 City Vehicle Use Policy (**Exhibit 8**) memo from Larry Stringer, former Deputy Director for Operations (DDO) states in relevant part:

All City vehicles are for official City business use only. Employees may not use a City vehicle for personal errands.

On December 1, 2020, Santiago violated the City's City Vehicles Policy contained in the City's Employee Handbook; the Citywide Vehicle Use Policy; and the DDO's City Vehicle Use Policy memo when he used a City vehicle and City resources for non-City business when he drove and parked his City vehicle at five non-work locations.

E. Violation of City's Attendance and Punctuality Policy

The City's Attendance and Punctuality Policy contained in the City's Employee Handbook states in relevant part:

Regular and prompt attendance is an essential requirement of your job. As a City employee, you are to report to your work station at your scheduled work time. Your time records must accurately reflect the time you start work and the number of hours worked in every work day. (Exhibit 9)

On December 1, 2020, Santiago was instructed to work at the Junipero Serra Boulevard Project where he worked from 8:25 a.m. to 10:26 a.m., for a total 2 hours. Santiago left the Junipero Serra Boulevard Project at 10:26 a.m. and after did not perform any more work that day as he drove and parked the City vehicle at five non-work locations.

While he was paid for working 6 hours from 7:00 a.m. to 1:00 p.m., he did not work the entire 6 hours. Santiago only spent a total of 2 hours at his assigned work area. Santiago violated the City's Attendance and Punctuality policy when he did not accurately reflect the time he worked on December 1, 2020.

On November 21, 2014, Santiago acknowledged he read and understood the City Employee Handbook. **(Exhibit 10)**

F. Santiago Has a History and Pattern of Misusing City Resources, Being Dishonest and Violating City and Department Policies

On September 24 and 25, 2019, Santiago engaged in similar misconduct as addressed in this investigation because he failed to report to the work sites on time and instead drove around the City in a City vehicle without performing any work; he reported working for more hours than he actually did. He was also found to be dishonest when questioned about his whereabouts and actions. **(Exhibit 14)** Although he served a 10 day-suspension from June 3 to 16, 2020, six months later, he again engaged in the same misconduct when he took 20 rolls of sod and dropped it off at a private residence and then drove to various locations which were not his assigned work locations.

EXHIBITS

- Exhibit 1: 3417 Gardener Job Description
- Exhibit 2: December 1, 2020 Whistleblower Complaint
- Exhibit 3: December 1, 2020 GPS Report
- Exhibit 4: KeyWatcher Report
- Exhibit 5: Use of City and County Property for Business Purposes Only Policy
- Exhibit 6: March 16, 2016 Appropriate Use of City Vehicles policy memo
- Exhibit 7: City Vehicles Policy
- Exhibit 8: November 2, 2017 City Vehicle Use Policy memo
- Exhibit 9: City's Attendance and Punctuality Policy
- Exhibit 10: Employee Handbook Acknowledgement
- Exhibit 11: December 1, 2020 Payroll records
- Exhibit 12: Citywide Vehicle Use Policy
- Exhibit 13: Notice of Suspension and *Skelly* Decision for Santiago's Dishonesty; Misuse of City Time and Resources; Violation of Department Policy and Procedures: Leaving Assigned Zone
- Exhibit 14: Sloat and Sunset photo with sod.

EXHIBIT 1

City and County of San Francisco Gardener (#3417)

DEFINITION

Under general supervision, performs routine maintenance and landscaping renovation tasks to care for athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas.

Essential functions of this class include: preparing soil by rototilling, spading and fertilizing; maintaining plants by planting, transplanting, cultivating, irrigating and pruning; identifying a large variety of plant material and their cultural requirements; identifying pests and diseases, performing techniques such as Integrated Pest Management (IPM) to control or mitigate the pests and diseases; maintaining lawns by raking, edging, mowing, watering, weeding, aerating, fertilizing, and over seeding; maintaining grounds by clearing brush and debris, sweeping and raking public activity areas, cleaning up litter and clearing drains; changing sprinkler heads when required; operating power and manual equipment and/or tools such as mowers, watering equipment, gopher traps, and other types of gardening equipment and/or tools; performing routine maintenance on landscaping equipment and/or tools to ensure they are in good working condition; performing general maintenance tasks on grounds and facilities to ensure clean and safe premises; and performing other job duties as required.

DISTINGUISHING FEATURES

The 3417 Gardener performs skilled, semi-skilled and manual labor work related to the routine maintenance and landscaping renovation of athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas.

The 3417 Gardener is distinguished from the 3422 Park Section Supervisor in that the latter is the entry-level supervisory class in the Agricultural and Horticulture series.

SUPERVISION EXERCISED

None

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

According to Civil Service Commission Rule 109, the duties specified below are representative of the range of duties assigned to this job code/class and are not intended to be an inclusive list.

1. Prepares soil by rototilling, grading, spading, and fertilizing to promote plant growth and to prevent drainage problems.
2. Maintains plants by planting, transplanting, cultivating, irrigating and pruning to promote plant growth and to prevent plant deterioration.

3. Identifies and destroys pests and diseases on plants and/or lawn areas by performing techniques such as Integrated Pest Management (IPM) to control and/or mitigate the pests and diseases.
4. Maintains lawn areas by raking, edging, mowing, watering, weeding, aerating, fertilizing, over seeding and/or other landscaping function(s) to promote lawn health and erosion control.
5. Maintains grounds of athletic fields, squares, parks, playgrounds, stadiums, thoroughfares and/or other landscape areas by clearing brush and debris, sweeping and raking areas, cleaning up litter, clearing drains, and preventing hazardous conditions.
6. Operates power and manual equipment and/or tools such as mowers, water equipment, gopher traps, and other types of gardening equipment and/or tools to assist in maintaining landscape areas.
7. Performs routine maintenance on gardening equipment and/or tools to ensure they are maintained and in good working condition.
8. Performs general maintenance duties on grounds and facilities such as athletic fields, sandboxes in parks, public easements, restroom facilities, irrigating systems, and other ground and facility areas to ensure clean and safe premises.
9. May be assigned to work with and/or direct the work of park volunteers.

KNOWLEDGE, SKILLS AND ABILITIES

Knowledge of: practices, methods, and procedures used to identify erosion of soil, squares, parks, playgrounds, stadiums and other landscaped areas and the knowledge to perform corrective measures; knowledge of safety practices, methods and procedures (e.g., OSHA and other State regulations) used to ensure the safety of employees and the general public; knowledge and ability to perform landscaping procedures to maintain grounds and facility areas; knowledge to correctly identify and control insects, diseases and other pests that are harmful to plants and lawn areas; knowledge and ability to identify various species of plants and to care for the plants based on their cultural requirements; knowledge of irrigation principles which include the ability to operate and troubleshoot sprinklers, time clocks, detect leaks, and perform minor repairs as needed.

Ability to: safely use and maintain gardening equipment and tools such as pruning shears, rototillers, spades, rakes, power chain saws, chippers, mowers, hand and power edgers, wheelbarrows, hoes and other gardening equipment and/or tools; safely lift, carry or move large plants in containers, fertilizer, hoses, power tools and equipment, ladders, debris and other gardening equipment and products as needed; communicate written information in a clear, concise and understandable manner to staff, departmental personnel and the general public; communicate effectively and courteously with staff, other departmental personnel, and the general public as well as understand and correctly follow instructions; establish and maintain effective and cooperative working relationships and effectively work with staff, departmental personnel and the general public; maintain a valid driver's license in order to drive a motor vehicle.

MINIMUM QUALIFICATIONS

These minimum qualifications establish the education, training, experience, special skills and/or license(s) which are required for employment in the classification. Please note, additional qualifications (i.e., special conditions) may apply to a particular position and will be stated on the exam/job announcement.

Education:

Experience:

1. Three years of verified experience in the care, construction or maintenance of landscaped areas by planting, weeding, fertilizing, irrigating, pruning, and controlling pests in the following areas: sports and athletic natural turf fields, golf courses, parks, ornamental gardens, arboreta, greenhouses, nurseries, botanical gardens and/or public landscaped areas; OR
2. Possession of a Certificate of Achievement from an accredited college or university in horticulture, landscaping, gardening, nursery and garden center operation, commercial cut flower and greenhouse production or related field and two years of verifiable experience in the care, construction or maintenance of landscaped areas by planting, weeding, fertilizing, irrigating, pruning, and controlling pests in the following areas: sports and athletic natural turf fields, golf courses, parks, ornamental gardens, arboreta, greenhouses, nurseries, botanical gardens and/or public landscaped areas; OR
3. Possession of an Associate of Arts or Science degree from an accredited college or university in horticulture, landscaping, gardening, nursery and garden center operation, commercial cut flower and greenhouse production or related field and 18 months of verifiable experience in the care, construction or maintenance of landscaped areas by planting, weeding, fertilizing, irrigating, pruning, and controlling pests in the following areas: sports and athletic natural turf fields, golf courses, parks, ornamental gardens, arboreta, greenhouses, nurseries, botanical gardens and/or public landscaped areas; OR
4. Completion of 3,000 hours of the City and County of San Francisco's gardener apprenticeship program.

License and Certification:

Requires possession of a valid California driver's license.

Substitution:

NOTES

SUPPLEMENTAL INFORMATION

NOTE:

The nature of the work may require exposure to inclement weather conditions and may require exposure to infectious and/or hazardous materials and/or conditions. All positions require driving. Some positions may require riding mowers and driving small utility vehicles. Some positions may require weekend or shift work.

SPECIAL REQUIREMENTS:

The 3417 Gardener requires the ability to safely and correctly lift, drag and/or move with

assistance large and/or heavy plants and equipment to truck bed level and the ability to kneel, bend and squat for considerable periods of time. The probationary period will be used to evaluate these abilities.

PROMOTIVE LINES

To: 3422 Park Section Supervisor

From: 3410 Apprentice Gardener

ORINATION DATE: 04/18/1983

AMENDED DATE: 07/21/10, 12/5/11, 10/10/18

REASON FOR AMENDMENT: To accurately reflect the current tasks, knowledge, skills & abilities, and minimum qualifications.

BUSINESS UNIT(S): COMMN SFCCD SFMTA SFUSD

EXHIBIT 2

Issue(s) Identified by the Whistleblower Program

1. Jose Santiago used a city vehicle to inappropriately drop off sod at a residential address.
2. Jose Santiago misappropriated city property (sod) and dropped it off at a residential address.

Text of Actual Complaint

“DPW Worker dropped off about 20 rolls of Sod to a private residence at 370 Naples. Driving a white twin cab pickup. Hispanic, shaved head. was there maybe 10 minutes
truck number started with 450
couldn't see the remaining 3 numbers possible 681
small city emblem on door
Truck had a large sticker by the gas tank drivers side”

Confidentiality notice: *The information in this document contains confidential whistleblower information. This document contains information intended only for the use of the individual or entity which received the document. If the reader of this document is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, any dissemination, publication or copying of this*

important that you respond to this complaint in a timely manner.

At minimum, your response to the Whistleblower Program should include the methodology of the investigation, investigation findings, and any corrective or preventative action(s) your department took in response to the complaint.

Complaint: BHL46g84

Complaint receipt date: December 1, 2020

Complaint response due: January 29, 2021

Subject Name: Jose Santiago

Subject Department: DPW (Bureau of Urban Forestry)

Complainant:

- Anonymous
 Contact Information Provided to the Whistleblower Program

What did the subject do or fail to do that was wrong?

Issue(s) Identified by the Whistleblower Program

1. Jose Santiago used a city vehicle to inappropriately drop off sod at a residential address.
2. Jose Santiago misappropriated city property (sod) and dropped it off at a residential address.

CONFIDENTIAL—Whistleblower Complaint

Preliminary Whistleblower investigation: GPS records confirm vehicle 450608 was at the reported address at the reported time. DPW has confirmed that Jose Santiago was the driver of the vehicle at the time and that sod is sometimes used/purchased by the department.

What policy, rule, regulation, or law do you believe to have been violated?

“giving away city property or using a city vehicle for private purposes. abusing company time while working. Saw him try to jump up the gate but didn't make it.”

When did the incident occur? When were you made aware of the problem?

“12-01-20 about 1215pm”

“saw him double park and unload the sod on 12-01-20 and left them in front of 370 Naples street”

Where did the incident take place?

370 Naples Street

EXHIBIT 3

Vehicle Label #	Satellite	Driver	Trip Begin Time	Trip Duration (dd:hh:mm)	Stop Begin Time	Stop Duration (dd:hh:mm)	Location Address
450608		Unassigned	12/1/20 7:06:41 AM	00:00:45	12/1/20 7:51:52 AM	00:00:22	4226 Ocean Ave, San Francisco, CA 94132-1219 US
450608		Unassigned	12/1/20 8:14:16 AM	00:00:12	12/1/20 8:25:57 AM	00:02:01	Junipero Serra Blvd, San Francisco, CA 94127 US
450608		Unassigned	12/1/20 10:26:51 AM	00:00:11	12/1/20 10:38:10 AM	00:00:38	565 Laguna Honda Blvd, San Francisco, CA 94127-1018 US
450608		Unassigned	12/1/20 11:15:44 AM	00:00:14	12/1/20 11:29:29 AM	00:00:03	Sloat Blvd, San Francisco, CA 94132 US
450608		Unassigned	12/1/20 11:32:42 AM	00:00:01	12/1/20 11:33:28 AM	00:00:17	Sloat Blvd, San Francisco, CA 94132 US
450608		Unassigned	12/1/20 11:50:01 AM	00:00:23	12/1/20 12:12:51 PM	00:00:11	377 Naples St, San Francisco, CA 94112-2958 US
450608		Unassigned	12/1/20 12:23:55 PM	00:00:02	12/1/20 12:25:40 PM	00:00:06	601 Excelsior Ave, San Francisco, CA 94112-2123 US
450608		Unassigned	12/1/20 12:31:30 PM	00:00:24	12/1/20 12:55:03 PM		2234 Cesar Chavez St, San Francisco, CA 94124-1002 US

EXHIBIT 4



Audit Key Transactions Report Morse Watchmans Inc.

Site: BUF
 Transaction Time Zone: (UTC-08:00) Pacific Time (US & Canada)
 Transaction Date/Time: 12/1/2020 12:00:00 AM - 12/1/2020 11:59:59 PM
 Daily Time Filter: 12:00:00 AM - 11:59:59 PM
 Transaction DOW: SUN, MON, TUE, WED, THU, FRI, SAT
 User(s): All
 Key(s): 26

Report Date/Time: 3/2/2021 11:55:36 AM
 Local Time Zone: (UTC-08:00) Pacific Time (US & Canada)
 Created By: cshort

Keys Out

Keys In

Key No: 26 Key Name: 450608

Date/Time Out	Out Code	By User	Key Access Dept	KWT	Date/Time In	In Code	By User	Key Access Dept	KWT	Time In Use (HH:MM)
12/1/2020 4:48:18 AM		Reed, Douglas		KW-BUF1	12/1/2020 12:52:22 PM		Santiago III, Jose		KW-BUF1	0008:04
Total Time In Use:										0008:04

Total Records: 2
 Total Pages: 1
 REPORT END

EXHIBIT 5

CITY AND COUNTY OF SAN FRANCISCO



DEPARTMENT OF HUMAN RESOURCES

POLICY REGARDING USE OF CITY AND COUNTY PROPERTY FOR BUSINESS PURPOSES ONLY

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited. City resources include, but are not limited to, facilities, equipment, devices, telephones, computers, copier, fax machine, e-mail, internet access, supplies and any time for which you are receiving compensation from the City. Inappropriate uses of City resources include, but are not limited to: online gambling; viewing sports events online; playing games, streaming video or music on a work computer; viewing or distributing materials that are not related to City business or that are sexually explicit; and frequent talking on a personal cell phone or texting during work hours.

Your use of the internet may be monitored by departmental Information Technology staff or other City staff as necessary at any time. This may include monitoring the amount of time you spend on the Internet, the Internet websites you visit and/or the content of the information you send, receive and view using the internet. Monitoring may occur either routinely or as a result of a concern that you may be using the Internet inappropriately, and may occur at any time and without warning or notice.

Further, the City's E-Mail system may only be used for authorized official communications. The City may also monitor your E-Mail usage at any time and without warning or notice. Inappropriate use of City resources may result in discipline, up to and including termination of employment.

City and County of San Francisco Department of Human Resources Employee Handbook January 2012, p. 48.

EXHIBIT 6



Edwin M. Lee
Mayor

Mohammed Nuru
Director

Larry Stringer
Deputy Director

Office of the Deputy Director
for Operations

2323 Cesar Chavez St.
San Francisco, CA 94124
tel 415-695-2003

sfpublicworks.org
facebook.com/sfpublicworks
twitter.com/sfpublicworks

March 18, 2016

To: All Public Works Operations Employees

From: Larry Stringer, Deputy Director for Operations

RE: Appropriate Use of City Vehicles

It has come to my attention that the Department's policies and procedures regarding the appropriate use of City vehicles is not being followed. This policy is being re-issued as a reminder that City vehicles are for official City business use only. Employees are not to use a City vehicle for personal errands.

In addition, please observe the following requirements:

1. All keys to City vehicles must be checked out of the Key Watcher System at the beginning of each shift and returned at the end of each shift. No one is to take the keys to a City vehicle home with them for any reason. Employees are not permitted to take any City equipment home.
2. Seat belts must be worn at all times when operating a City vehicle. Smoking is not permitted in City vehicles or on the premises at the Yard.
3. City trucks are not to be parked in any parking lot unless they are on official City business. They are to be parked legally on the street.
4. City vehicles should not be in the employee parking lot, and should not be double parked on Kansas Street in front of the Yard. Personal vehicles are not allowed to enter or park at the Yard unless with prior approval.
5. Vests are to be worn and zipped up at all times when operating a City vehicle. They need to be taken off during break or lunch time.
6. Parking in a red zone, blue zone, bus zone, or by a fire hydrant is NOT allowed. Also, City vehicles are not permitted to block a crosswalk or double park. Text or talk on cell phones while driving is illegal and also violates the City's and department's policy for the use of cell phones.
7. City vehicles that are scheduled to travel outside of city limits are required to call the Radio Room and state where they are going in the purpose of the travel.
8. All field employees are required to take coffee and lunch breaks within their assigned areas if you must leave your area for any reason, you must contact your supervisor for approval before hand. City vehicles must remain in their assigned districts.

9. When operating a City vehicle, you must comply with all state laws and Public Works/GSA's vehicle policies. You will be held responsible for any moving and or parking violations issue to you and/or your assigned City vehicle.
10. Vehicle accidents require police reports and it must be reported immediately to the Radio Room and your Supervisor. Any injuries must be reported no later than the end of the shift on the day they occur.
11. Vehicles are not to be left idling. Remove keys when exiting vehicle.
12. No valuable should be left visible in the cab of vehicle when exiting or parking vehicle.

Anyone observed violating these policies will be subject to disciplinary action. Your attention and cooperation with these policies is required.

EXHIBIT 7

CITY AND COUNTY OF SAN FRANCISCO



DEPARTMENT OF HUMAN RESOURCES

CITY VEHICLES

City vehicles are a resource whose use is limited by law. Like all City resources, City vehicles are to be used for City business only. Except where explicitly authorized to do so, employees may not take City vehicles home. City vehicles may not be used for personal business. Any citations you receive while using a City vehicle are your responsibility. Employees who violate the Vehicle Code or any other applicable laws and City policies in City vehicles may be subject to disciplinary action, up to and including termination.

City and County of San Francisco Department of Human Resources Employee Handbook January 2012, p. 51.

EXHIBIT 8



Edwin M. Lee
Mayor

Mohammed Nuru
Director

Larry Stringer
Deputy Director

Office of the Deputy Director
for Operations

2323 Cesar Chavez St.
San Francisco, CA 94124
tel 415-695-2003

facebook.com/sfpublicworks
twitter.com/sfpublicworks

DATE: November 2, 2017
TO: All Public Works Operations Employees
FROM: Larry Stringer *LS*
Deputy Director for Operations
SUBJECT: **City Vehicle Use, Policies and Procedures**

I will begin by thanking all of our employees who have been driving safely and have had no vehicle accidents. I appreciate your conscientiousness and your efforts to operate vehicles safely. I also want to thank all of you who follow the vehicle use policy.

I want to point out that in addition to our Operations and safe driving policies, all of us in Operations must adhere to the Citywide Vehicle Use Policy. No smoking or usage of cell phone while operating City Vehicles. Some other areas covered in the policy that the drivers are responsible and accountable for are:

- Possession of a valid California motor vehicle driver's license with the appropriate classification and any required endorsements needed for operating the vehicle assigned to the operator;
- Operate motor vehicles in a safe manner at all times;
- Comply with all applicable federal, state and local laws and regulations;
- Vehicles without a current BIT sticker shall not be operated until an inspection has been completed and a sticker is placed on the windshield of the vehicle;
- Report any mechanical or safety defects to your supervisor immediately;
- Report moving violations or parking citations to your supervisor by end of their work shift;
- All occupants are required to use seat belts;
- Vehicles and equipment are not to be altered in any way without the supervisors' or Central Shop's approval;
- Never operate a computer or other electronic device while driving a vehicle;
- Pull off the road to a safe location prior to making or receiving phone calls or using an electronic device ;
- Do not transport any personal guest or animal in a City vehicle unless approved by the Department Head or the designee and the guest is essential to municipal business;
- Do not park City vehicle in private parking lots;
- No driving through fast food drive-thru;
- All City vehicles are for official City business use only. Employees may not use a City vehicle for personal errands;
- All City vehicles need to have a pre-trip inspection done and signed by your supervisor.

Citywide Policy further stipulates that vehicle operating privileges may be revoked if a driver does not adhere to any of the responsibilities listed in the policy or refuses to undergo drug or alcohol testing in accordance with organization policies or as required by applicable state or local jurisdiction. Please review entire vehicle usage policy for more information.

I appreciate your continued support and cooperation in complying with all Public Works, GSA and Citywide policies. With your help, we will be able to keep our incidents of traffic accidents down. Thank you.

EXHIBIT 9

Attendance and Punctuality

Regular and prompt attendance is an essential requirement of your job. As a City employee, you are to report to your work station at your scheduled work time. Your time records must accurately reflect the time you start work and the number of hours worked in every work day.

All planned absences must be requested and approved in advance. If illness or some other emergency causes an unplanned or unforeseeable absence, you must notify your department as soon as possible on the first day of absence, and keep the department advised daily during the absence. In the case of an extended unforeseeable absence, you may be asked to complete forms and submit medical certifications as appropriate during your leave. Improper use of sick leave, failure to present medical certification when required, excessive absenteeism, tardiness, unauthorized absence or failure to notify your department when you are unable to report to work, may result in sick leave restriction, disciplinary action or termination.

Appearance and Dress Code

As a City employee, you represent the City and your department when you are on duty and/or when you are in a City uniform. Employees are expected to be neat and clean, and to dress for work according to generally accepted business and professional standards as dictated by their work assignment and as required by their department. The City reserves the right to restrict dress for legitimate reasons relating to safety, hygiene or environmental conditions.

Maintenance of Minimum Qualifications

You must possess and maintain the qualifications required by law and by the announcement of the examination under which you were appointed.

Business Hours

Except as otherwise provided in a collective bargaining agreement applicable to you or based on your department's operational needs, the typical workweek is 40 hours, consisting of five workdays of eight hours each. The City's official business hours are from 8:00 a.m. to 5:00 p.m.

Overtime and Compensatory Time Off

If you are required by your manager/supervisor to work overtime, contact your departmental personnel officer for information regarding your eligibility for overtime payment or compensatory time off. Employees in classifications designated "Z" are exempt from overtime under the Fair Labor Standards Act, but may be entitled to compensatory time off if provided by the collective bargaining agreement.

EXHIBIT 10

City and County of San Francisco

Civil Service Commission



EMPLOYEE HANDBOOK ACKNOWLEDGEMENT

The Employee Handbook has been prepared to give you important information on the City and County's commitment to diversity, policies on work schedules, safety on the job, and your obligations as an employee. It also provides you with the basics about your health care and retirement benefits, salary administration, pay periods, holidays and the civil service system. Please read it carefully.

The following is an acknowledgement statement.

I have received or been directed to the website containing the Employee Handbook which outlines policies, benefits and my responsibilities as an employee of the City and County of San Francisco. I will familiarize myself with the contents of the Handbook. By my signature below, I acknowledge, understand, accept and agree to comply with the information contained in the Employee Handbook.

I understand this Handbook is not intended to cover every situation which may arise during my employment, but is simply a basic guide to the policies and expectations of the City and County of San Francisco.

I understand that the City and County of San Francisco Employee Handbook is not a contract of employment and should not be deemed as such.

Jose Santiago III
(Print Name)

J. A. Santiago III
(Employee Signature)

11-21-14
(Date)

Original in Official Employee Personnel File
Copy to employee

OEPP 1-90 (7/08)



EDWIN M. LEE
MAYOR

Naomi Kelly
Acting City Administrator

General Services Agency

Employee Handbook of the City and County of San Francisco Receipt Acknowledgement

I hereby understand that a copy of the "Employee Handbook of the City and County of San Francisco" can be obtained online from the Department of Human Resources web site at: www.sfgov.org/dhr

Please Print:

<u>Santiago III</u> Employee Last name	<u>Jose</u> First Name	<u>A.</u> Middle Initial
<u>[Signature]</u> Employee Signature		<u>11-21-14</u> Date

cc: Employee
Personnel File

EXHIBIT 11

sfrmEnterTime2				
Employee	Roster Code	Date	TRC	Hour
Santiago III, Jose A-55990	DPWUF	11/30/2020	SLL - SICK LEAVE WITHOUT PAY	8
Santiago III, Jose A-55990	DPWUF	12/1/2020	AWL - ABSENCE WITHOUT LEAVE	2
Santiago III, Jose A-55990	DPWUF	12/1/2020	SLL - SICK LEAVE WITHOUT PAY	8
Santiago III, Jose A-55990	DPWUF	12/1/2020	SLL - SICK LEAVE WITHOUT PAY	-8
Santiago III, Jose A-55990	DPWUF	12/1/2020	WKS - Working Hour [at worksite]	6

EXHIBIT 12



OFFICE OF THE CITY ADMINISTRATOR



Edwin M. Lee, Mayor
Naomi M. Kelly, City Administrator

CITYWIDE VEHICLE USE POLICY

Mission Statement

During the past five Fiscal Years, excluding Police, Fire and MUNI, City departments have been involved in 942 vehicle incidents that have resulted in claims against the City. The City has paid over \$2.3 million as a result of those claims. In 2010, the City adopted a Driver's Guide as a first step towards creating a Vehicle Use Policy ("VUP"). To date, many departments have supplemented the Driver's Guide by implementing comprehensive VUPs, while other departments have policies which are strong in some areas, but would benefit from changes in certain elements to take advantage of best practices.

The purpose is to set forth practices for the safe operation of motor vehicles owned or operated by all City departments, excluding sworn (uniformed) staff of SFPD, Sheriff, and SFFD. Departments often have responsibilities that may require the operation of vehicles in areas off public roads; therefore specific addenda will be added by each department on an as-needed basis in order to address unique operational needs. However, this standardized policy will be incorporated into each department's standard operating procedures.

The VUP will serve as a baseline for departments' vehicular operations policies and as an enhancement to the existing 2010 Driver's Guide. As such, the VUP will focus on the operation of licensed motor vehicles primarily operated on public roads.

Policy

The City's VUP outlines the City's commitment to maintaining a safe vehicle fleet, and concern for the safety of people, the protection of property, and minimizing impacts upon the environment by City vehicle operations. VUP focuses on the safe operation of licensed motor vehicles primarily operated on public roads.

The following City VUP, to be administered under the auspices of the Office of the City Administrator, will be implemented by departments through the adoption of a Motor Vehicle Incident Prevention Program, the recommended minimum requirements of which are stated in Appendix A.

Nothing in this citywide VUP shall be interpreted or applied to interfere with, restrict or supersede departmental vehicle use policies or a Memorandum of Understanding ("MOU").

Definitions

Specific definitions for relevant terms shall be clearly defined and communicated to all staff authorized to drive a vehicle. Appendix A includes typical terms and standard definitions that shall be included within each department's Motor Vehicle Incident Prevention Program ("Program").

1 Dr. Carlton B. Goodlett Place, City Hall, Room 362, San Francisco, CA 94102
Telephone (415) 554-4852; Fax (415) 554-4849

Management, Leadership and Administration

Each department's senior management is responsible for demonstrating a commitment to safe vehicle use by allocating sufficient resources to manage its Program. The Program should be an integral component of each department's overall written safety program and managed by a designated staff person. The policy shall include language stating the department's commitment to maintain a safe vehicle fleet, and management's concern for the safety of people, the protection of property, and minimizing impacts upon the environment by City vehicle operations. It is also the responsibility of each department's Program to ensure that all elements of the Program be adhered to by staff as well as adherence to local, state and federal laws and regulations as they relate to vehicle operations.

Written Plan

Within thirty (30) days of the effective date of this Policy, each department must adopt Appendix A: Minimum Requirements of a Written Plan as their Motor Vehicle Incident Prevention Program. Depending on the operational and/or business needs, departments may add to this Program to make it more strict, specific, or stringent, but may not make changes that lessen the effect of the Program.

At a minimum, the Program shall detail a system of responsibility and accountability related to vehicular use which shall be established throughout the organization. The written plan shall document all elements of the Program including the assignment of drivers, performance management, training, incident investigation, discipline (where appropriate), and cost associated with the Program. If requested, this data should be made available in a format that is standard across all departments. Should a citywide coordinator position be staffed, a comprehensive annual report addressing those elements shall be submitted to the City Administrator and other department heads in order to evaluate the performance of the City's Programs. Based upon the annual report, specific recommendations should be made to address shortcomings in an effort to improve overall safe vehicle use.

DMV Review – FOR INFORMATIONAL PURPOSES

Departments shall participate in the California Department of Motor Vehicles [Employer Pull Notice \(EPN\) Program](#) and enlist all new employees whose job description requires possession of a valid California driver's license with no restrictions. The EPN Program was established to provide employers and regulatory agencies with a means of promoting driver safety through the ongoing review of driver records. Departments shall also require that all drivers be obligated to report any change in their DMV license status within twenty-four (24) hours or by the next business day upon such notification.

Training

Each department will provide drivers' training curriculum for all employees required to drive as a condition of their employment. The minimum curriculum is defined in Appendix B. Drivers shall receive training biannually to refresh their knowledge and be informed of new rules, regulations, and best practices, or on an as-needed basis based upon a driver's involvement in an incident. All training records shall be maintained by departments.

Communication

At a minimum:

- Departments shall communicate the requirement that employees sign the Business Use Declaration of the Program (Appendix C).
- Departments shall communicate training opportunities to employees.

Minimize Vehicular and Fuel Use

The City’s “Transit First Policy” provides opportunities for employees to use public transit, providing technology for video conferencing, encouraging employees to carpool, and use bicycles whenever practical.

Departments shall work closely with GSA-Fleet when ordering vehicles in order to specify vehicles that will perform efficiently, minimize greenhouse gas emissions, and meet the organizational needs of the department. Requests for specially equipped vehicles shall be reviewed by GSA-Fleet in the context of the department’s ability to safely use the vehicles and whether the department has trained staff to use the vehicle.

Consistent with the City’s environmental goals and to reduce operating costs, City employees are not allowed to idle an engine for more than five (5) consecutive minutes. For passenger vehicles in general, if an employee is likely to idle one minute or longer, he/she should turn the engine off and restart when he/she is ready to move the vehicle. Diesel vehicles, per California law, must not idle for longer than five (5) minutes. GSA-Fleet can assist departments with exemptions as needed.

For City Hall and nearby departments, and as more vehicle pools become available, departments should utilize City vehicle pools rather than assigning vehicles to individuals. As an example, the City Hall vehicle pool is available for daily use. GSA-Fleet can assist departments with vehicle pools and how to best minimize vehicle usage.

Business Use Policy

Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of City business. (See Appendix D Administrative Code Section 4.11.) Volunteers and contractors are not authorized to use City vehicles. However, after approval by the Department Head or designee, volunteers and contractors deemed to be essential to municipal functions may be allowed as passengers in City vehicles.

Toll citations, parking violation fees, traffic fines, and other citations associated with vehicle use shall be the sole responsibility of the vehicle operator. Each department shall hold accountable employees who accrue tolls, citations, and fines associated with their use of a vehicle unless otherwise specified in a MOU. Employees may seek toll and parking reimbursements in accordance with departmental policies and applicable Controller’s Office Travel Reimbursement Guideline.

Citywide Vehicle Use Policy (October 2014)

City vehicles are a resource whose use is limited by law. There is zero tolerance for vandalism of a City vehicle, including but not limited to graffiti, hate crime and defacement committed against City property without permission.

Incident Analysis and Reporting

A standardized incident response for drivers involved in an incident is described in Appendix A and shall be utilized by all departments.

Departments should analyze vehicle incident rates on at least an annual basis. Data from this analysis should be maintained for a period of five (5) years from the date of the incident.

Recognition Program for Employee Safe Driving

Each department should recognize employees who have adhered to the department's Program and who have not been involved in a preventable incident for the past fiscal year. These employees should be recognized in a fair and uniform manner from amongst their peers. Volunteers amongst this select group of exemplary vehicle operators should be utilized to assist drivers within the department who have not been able to achieve this status. Volunteers shall not be a replacement for formal defensive driver's training programs.

Appendix A
Minimum Requirements of a Motor Vehicle Incident Prevention Program
Template

CITY AND COUNTY OF SAN FRANCISCO
[DEPARTMENT]

MOTOR VEHICLE INCIDENT PREVENTION PROGRAM

1.0 POLICY

In order to promote safe driving and to reduce motor vehicle incidents, the [Department] establishes a Motor Vehicle Incident Prevention Program. The Program must include a written plan, definitions, DMV license review, vehicle operator training, communication, incident reporting, recordkeeping, and recognition for safe driving. This Program applies to employees driving [Department] vehicles on City business and it is expected that all employees either operating a City vehicle or who supervise an employee operating a City vehicle shall adhere to this Program.

1.1 DEFINITIONS

Aggressive Driving. Driving in a selfish, bold or pushy manner, without regard for the rights or safety of other users of the roadway.

Collision. An incident in which the first harmful event involves a motor vehicle in motion coming in contact with another vehicle, other property, person(s) or animal(s).

Crash. An incident involving one or more motor vehicles in motion.

Defensive Driving. Driving safely, in spite of the conditions around you and the actions of others.

Department Vehicle. Any vehicle owned, leased, or rented on behalf of the Department.

Distracted Driving. Diversion of the driver's attention from the task of operating a motor vehicle by activities, objects or events inside or outside the vehicle, or by factors such as emotional stress or preoccupation, or the use of mobile electronic devices.

Employee. An individual in the employ of the City and County of San Francisco, with any type of Civil Service status.

GSA-Fleet. Currently located at 1800 Jerrold St. and is responsible for the maintenance of the majority of CCSF's passenger and truck fleet. They can be reached at (415) 550-4600.

Incident. An undesired event that did or is claimed to have resulted in personal harm or property damage, or in any undesirable loss of resources, including moving violations.

Incident Rate. The number of incidents per some unit of measurement or the purpose of assessing safety performance over time or comparing performance with other organizations.

Injury. Physical harm or damage to a person resulting in the marring of appearance, personal discomfort and/or bodily harm, impairment or death.

Motor Vehicle. Any licensed mechanically or electrically powered device (except one designed solely to move by human power), not operated on rails, designed to be operated primarily on public streets and roads, Cargo and/or attachments (trailers, etc.) to a motor vehicle are considered part of that vehicle.

Passenger. A person, other than the driver of the vehicle, who is in or on a motor vehicle.

Preventable Collision. One in which the driver failed to do everything that reasonably could have been done to avoid the collision.

Regular. An employee who is required to drive at least once during their regular daily shift in order to complete their assignment.

Remedial Training. Training required following an incident to upgrade and renew skills and demonstrate proficiency.

Shall. The word is intended to indicate a mandatory practice.

Should. The word is intended to indicate a recommended practice.

Motor Vehicle Incident Prevention Program. Each Department's written policy that defines how vehicles are safely used, trains employees on their safe use, documents and investigates incidents, and maintains data to further safe vehicle use.

2.0 RESPONSIBILITIES

It is the City's expectation that all employees adhere to the Program. Each Department shall establish clearly defined roles for enforcing these Standards. The following tasks should be assigned to specific staff including at a minimum a senior manager, human resources staff, safety staff, or Department fleet manager, front-line supervisors, and vehicle operators, as well as other appropriate staff in order to ensure the Program functions as intended.

- General:
 - Implement the [Department] Motor Vehicle Incident Prevention Program and Vehicle Use Policy
 - Review vehicle use by task to:
 - Maximize the use of alternative transportation in conformance with the City's Transit First Policy and Carpooling resources
 - With the assistance of GSA-Fleet determine suitability of vehicles for designated operations

Citywide Vehicle Use Policy (October 2014)

- Training:
 - Provide for training of personnel under their jurisdiction, consistent with the organization and personnel needs
 - Budget expenditures for motor vehicle incident prevention including training (behind the wheel, etc), classroom training, instructors, etc.
 - Coordinate and track scheduling of employees for Defensive Driving Training.
- Business Use Policy:
 - Have employees review and endorse the Business Use Declaration of the Program and forward the signed copy to the human resources unit
- Incident Prevention:
 - Participate in the CA DMV EPN Program for all new employees assigned to drive a vehicle
 - Review DMV records as needed and inform the employee's supervisor of any changes in an employee's driving status
 - Maintain a database of all authorized drivers' DMV status and incident history for the Department
- Incident Response:
 - Process and review Vehicle/Equipment Incident Reports to determine preventability
 - Investigate, determine cause of motor vehicle incidents, document findings, and implement actions to prevent future incidents
 - Carry out appropriate disciplinary action for violation of safe driving practices
- Incident Analysis and Reporting:
 - Prepare quarterly and annual statistical reports for Department management with recommendations for reducing preventable incidents
 - Include a review of the driver's safety record as a part of the annual performance evaluation

2.10. Employees of [Department] are responsible for the following:

- Maintaining a valid California driver's license and notifying their supervisors immediately if they receive any notification from the Department of Motor Vehicles (DMV) that affects their ability to drive a City vehicle.
- Reviewing and endorsing the Department's Business Use Declaration of the Program.
- Conducting a pre-operation vehicle inspection each time a vehicle is to be operated to ensure equipment operates safely. Report unsafe conditions immediately. GSA-Fleet can provide an inspection check list for departments.
- Using a City vehicle on City business if one is provided.
- Informing supervisor(s) of motor vehicle incidents, including traffic violations and parking violations, before the end of work shifts.
- Reporting motor vehicle incidents by following the procedures in Section 4.0.
- Attending required trainings, including but not limited to Defensive Driving Training, as scheduled.
- Wearing a seat belt when riding in or operating a City vehicle.
- Knowing and obeying State motor vehicle laws and defensive driving rules.
- Prohibiting the transportation of any personal guest in a City vehicle, unless approved by the Department Head and if the guest is essential to municipal functions.

Citywide Vehicle Use Policy (October 2014)

- Not transporting animals in a City vehicle, unless the animal is associated with City business and the vehicle is properly equipped to do so.
- Not using hand-held or hands-free phones or any other hand-held or hands-free mobile technology while driving on City business.
- Not smoking in City vehicles.
- Cooperating with incident investigators and complying with corrective actions, that could lead to progressive discipline for violation of safe driving practices.
- Paying any citations, tolls, and fees in a timely manner or be subject to potential disciplinary procedures.¹

3.0 TRAINING

Employees, supervisors and managers who drive on City business, shall be included in a Defensive Driving Training Program. The training frequency is:

- Drivers
 1. Provide Defensive Driving training for new employees prior to assignment.
 2. Provide refresher Defensive Driving training and evaluation every two (2) years for regular drivers.
 3. Complete refresher training on safe practices annually.
- Drivers who have a motor vehicle incident while driving a City vehicle in the past three (3) months may repeat Defensive Driving training prior to being allowed further use of a vehicle for business use.

See Appendix B for the [Department] minimum training material and requirements.

4.0 INCIDENT REPORTING

All employees must utilize the following procedures when involved in a vehicle incident:

- Call 911 immediately for an injury incident, indicate that you are a City employee, and follow the dispatcher's guidance.
- For a non-injury incident on a street or highway, call (415) 553-0123, indicate that you are a City employee and request that an officer come to the scene to make a collision report. After calling, employees should wait 1 hour for an officer to arrive. All City vehicle incidents on a street or highway require a police report. If the police do not respond, go to the nearest police station and file a report to document the incident facts.
- For an incident off of a street or highway that involves property damage to another party, call (415) 553-0123, indicate that you are a City employee and request that an officer come to the scene to make a collision report. After calling, employees should wait one (1) hour for an officer to arrive. If the police do not respond, go to the nearest police station and file a report to document the incident facts.
- For an incident off of a street or highway that does not involve property damage to another party, comply with the Department's Vehicle/Equipment Incident Reporting Procedures, a police collision report is not required.

¹ Taken from 2010 Driver's Guide

Citywide Vehicle Use Policy (October 2014)

- For non-injury incidents that occur outside of the City and County of San Francisco, contact the local police agency, or Highway Patrol to file a report and document the incident facts.
- Notify your supervisor.
- If there is property damage or personal injury to the public, contact the On Call Investigator in the City Attorney's office at (415) 554-3900.
- Exchange information with other driver(s). Do not discuss fault, guilt, or liability.
- Be courteous and obtain the other driver's name, address, phone number, license plate number, driver's license number, insurance company, and policy number. Obtain the names, addresses and phone numbers of any witnesses. Provide the Notice of Self-Insurance card, or other form of proof of insurance. Per Government Code §990, the City and County of San Francisco is self-insured.
- Take pictures, if possible.
- If you need a tow truck, call the City's contracted towing company. For passenger vehicles or for trucks under 1-ton, call Golden Gate Tow at (415) 826-8866. For trucks of 1-ton or more, call Atlas Towing at (415) 673-4242.
- Complete a Department Vehicle/Equipment Incident Report prior to end of your work shift and make distribution according to your department's instructions. Send one copy of the report to: Office of the City Attorney, Claims Office – 7th Floor, 1390 Market Street (Fox Plaza), San Francisco, CA 94102.
- Substance Abuse Prevention Policy's Post Accident provision – check specific MOU governing test procedures and follow through.

If the City vehicle is damaged, obtain an estimate of repair from Central Shops, or from your department designated source within forty-eight (48) hours. Do not wait for an estimate before completing and sending the Vehicle/Equipment Incident Report.

5.0 License Suspensions and Revocations

When official notification from the California Department of Motor Vehicles is received stating that an employee has a suspended or revoked license, the manager must:

1. Notify the employee of the information received from the EPN Program.
2. Request that employee rectify the situation by obtaining the California Department of Motor Vehicles Driver License/Identification Card Information Report that states their license is valid and provide original to their supervisor. The Report can be obtained at:

Department of Motor Vehicles
1377 Fell Street
San Francisco, CA 94115
(415) 557-1170

3. Supervisor shall send a copy of the report to Department Personnel.

If employee is unable to rectify the situation, then the Department shall immediately remove the employee from driving duties, until driver status is restored. The Department may, depending on employee's work assignment, approve an employee's request for

Citywide Vehicle Use Policy (October 2014)

personal leave, compensatory time off, vacation, or temporary assignment to another job that does not require driving.

If the employee's driver's license is suspended or revoked, the employee will have ninety (90) days to rectify his or her driving status. During this time they will not be allowed to drive a City Vehicle. It will be up to the Department Head or designee whether the employee will be allowed to continue to work during that period to perform their assignment. At the discretion of the Appointing Officer or designee, at the end of ninety (90) days, an employee who has not been able to correct licensure revocation or suspension may be released from employment for failure to meet the minimum requirements of his/her employment.

If employee meets the DMV negligent driver criteria, he/she will not be eligible to drive on City business. A negligent driver is defined as one who has recorded four (4) traffic violation point counts within twelve (12) months, six (6) points within twenty-four (24) months, or eight (8) points within thirty-six (36) months.

6.0 Recordkeeping

Department staff assigned to implement the Program shall maintain motor vehicle incident reports for five (5) years and defensive driving training records for three (3) years.

7.0 Recognition for Safe Driving

Employees who routinely drive on City business will be recognized for their safe driving performance by their managers in a fair and uniform manner.

Appendix B

Vehicular Training Curriculum (Minimum Standards)

[Department]

Minimum Motor Vehicle Incident Prevention Program and Vehicle Use Policy Training Curriculum

The training program shall address requirements for new drivers (e.g., orientation), continuing education of existing drivers, and instances where remedial training shall be required. The training program should include both classroom and behind-the-wheel training.

Consideration should be given to the following topics:

- Defensive driving
- Substance abuse
- Distracted driving (e.g., cell phone use, mobile technology use)
- Aggressive driving (e.g., tailgating)
- Vehicle inspection
- Commodity specific training (e.g., hazardous materials, material handling, cargo securement)
- Safety regulations
- Security procedures
- Emergency equipment
- Post-incident procedures and incident reporting
- Vehicle inspection/maintenance
- The Department's Business Use Declaration of the Program
- Using a City vehicle on City business if one is provided
- Seat belt use
- State motor vehicle laws
- Personal guests and animals in City vehicles
- Prohibition of smoking in city vehicles
- Paying tolls, tickets, and citations

A. Substance Abuse/Drug-Free Workplace

Be aware that, with the exception of MTA, departments employing miscellaneous employees are covered by either the Citywide Substance Abuse Prevention Policy ("SAPP") (<http://sfdhr.org/index.aspx?page=52>) or MOU provisions that closely follow that policy (<http://sfdhr.org/index.aspx?page=54>). Additionally, there are specific classifications who are covered by the Department of Transportation ("DOT") drug testing procedures.

Under such policies, you may not manufacture, distribute, dispense, possess, use or be under the influence of alcohol or illegal drugs in workplace. This prohibition includes prescription drugs which may impair the operator/driver if used improperly (e.g., whether prescribed for the driver/user or not). As stated in such policies, violation of this policy may be grounds for discipline up to and including dismissal.

Citywide Vehicle Use Policy (October 2014)

If you perform activities in your job that are funded by a federal grant, you must notify your Department Head of any drug convictions for violation of drug laws that took place in the workplace within five (5) days of any such conviction. Employees in certain safety-sensitive positions, or in positions where testing is required by federal law, may be required to submit to periodic drug tests. All employees may be required to submit to drug testing under certain circumstances consistent with federal, state, and local laws and applicable City policies (e.g., Substance Abuse Prevention Policy) and MOUs.

B. Distracted Driving (Consistent with 2010 Drivers Guide and City Administrator's Memo dated 8/21/13, Re: Rules and Guidelines Regarding Use of City Vehicles)

1. Cell phone use is prohibited while operating a motor vehicle. (This includes wireless, hands-free devices.) Do not text while driving; do not use a laptop, notebook, GPS device, or netbook while driving. It is recommended that you limit over-air communications whenever possible. It is recommended that you record a voicemail message for your phone specifically for when you are driving to let others know you will return their call as soon as it is safe to do so.
2. Smoking or eating while operating a vehicle shall be prohibited.
3. The use of head phones for audio entertainment shall be prohibited.
4. Unless authorized by management, non-employees are prohibited from riding within or on vehicles.
5. Unless authorized by management animals are prohibited from riding within or on vehicles.

C. Aggressive Driving

Speeding, failure to observe traffic laws, tailgating, multiple lane changes, and excessive use of horn, verbal arguments with other drivers or pedestrians, and obscene gestures shall be prohibited while operating a vehicle

D. Vehicle Inspection/Maintenance

1. Fueling (taken from 2010 Drivers Guide):

For emergency readiness, always keep your vehicle fuel tank at least $\frac{1}{4}$ full or the minimum set by your department. Emergency and public safety vehicles should be at least $\frac{3}{4}$ full at end of shift.

Unless authorized by your supervisor, use City-operated refueling stations for your city vehicle. City refueling stations shall be used solely for City vehicles. Stations require the use of an asset management refueling key. Each City vehicle has an individually assigned Fuel Key to access any of the City-operated automated self-serve refueling stations. To obtain a new or replacement Fuel Key, contact your departmental fleet coordinator or Central Shops.

Refueling instructions are posted at each station. The basic steps are:

1. Key in the mileage reading + "Enter" at the Sentry post.
2. Insert your refueling key to identify the vehicle.

Citywide Vehicle Use Policy (October 2014)

3. Choose the pump you want to use, and key in the pump number + “Enter”.
4. Then pump gas as at a regular service station.

Before drivers use a CNG (compressed natural gas) vehicle, they must attend a thirty (30) minute safety training course. Contact your departmental fleet coordinator or Central Shops to sign up for training.

1. At a City-operated CNG station, use the asset management key. No smoking or open flame shall be allowed within fifty (50) feet of the fueling area or at any time in the vehicle.
2. Shut the engine off.
3. Set the vehicle’s hand or emergency brake.
4. Remove the protective cap on the vehicle refueling receptacle (if applicable).
5. Remove the fueling hose from the dispenser.
6. Inspect the fueling hose and connector prior to making a connection.
7. Make a connection and ensure the connector is locked in place.
8. Open the refueling valve.
9. Turn the dispenser on.
10. Turn the dispenser off after flow stops registering on it.
11. Shut off the refueling valve.
12. Place the fueling hose back on the dispenser.

2. Car Wash

Under certain circumstances car washes are available to City vehicles, and require a numbered voucher issued by Central Shops. Standard washes include outside wash and dry, interior vacuum and windows. Follow your department’s policy regarding car washes, and adhere to the City’s goal of reducing water usage and car washing expenses by at least fifty percent (50%).

3. Maintenance

A City vehicle receives scheduled preventive maintenance at regular intervals to ensure safe, cost effective operations and to comply with warranty requirements. A preventive maintenance notice is distributed each month in advance of the due date to departmental fleet coordinators and/or drivers. A “Next Service Due” decal is placed on the upper left hand corner of the windshield to assist you in maintaining the City vehicle. For service appointments, contact your departmental fleet coordinator or Central Shops.

You can request service at other times as needed. If you notice warning, service, check engine, oil change lights, leaks, overheating, worn tires, etc., contact your departmental fleet coordinator or Central Shops. Keep your vehicle clean, inside and out.

Appendix C
Business Use Declaration of the Program

[Department]
Motor Vehicle Incident Prevention Program
Driver Acknowledgment

Operating an organizational vehicle is a privilege. All drivers will be responsible and accountable for the following:

1. Possess a valid motor vehicle driver's license issued by the State of California. This license must have the appropriate classification and any required endorsements needed for operating the vehicle(s) assigned to the operator.
2. Be subject to a driver's motor vehicle record check, and if such records show a suspension or revocation of driving privileges, the driver will not be authorized to operate a motor vehicle for the organization.
3. Operate motor vehicles in a safe manner at all times.
4. Comply with all applicable federal, state, and local laws and regulations.
5. Report any mechanical or safety defects immediately.
6. Comply with maintenance schedules as prescribed by the Department.
7. Report moving violations or parking citations to their supervisor by the end of their work shift.
8. Upon notification report changes in driver's licensure status to their supervisor within twenty-four (24) hours or by the next business day to their supervisor.
9. Accurately record and report vehicle mileage in accordance with organization procedures.
10. Participate in required driver safety education and training Programs including an annual review of the Driver's Guide.
11. Require all occupants to use seat belts, child safety seats, booster seats or other age or weight appropriate restraint devices at all times.
12. Pay all tolls, moving/parking violation fines, and fees in a timely manner, unless otherwise specified in a MOU.
13. Not alter in any way without their supervisors' approval vehicles or equipment within a vehicle leased, owned or rented by the organization in any way.
14. Special permission is required to transport children in City vehicles. If you are authorized to transport children in your City vehicle, always transport children under age thirteen (13) in the back seat. Infants in rear-facing infant seats and other children under age thirteen (13) should never be in the front passenger seat facing an airbag.
15. Never operate a computer or other electronic device while driving a motor vehicle.
16. Pull off the road to a safe location prior to making or receiving phone calls or using an electronic device.
17. Do not transport any personal guest in a City vehicle, unless approved by the Department Head and the guest is essential to municipal business. Department vehicles specifically utilized for the purpose of transporting clients of the Department shall be exempt from this requirement.
18. Do not transport animals in a City vehicle, unless the animal is associated with City business and the vehicle is properly equipped to do so.

Citywide Vehicle Use Policy (October 2014)

19. The City reserves the right to install GPS systems in order to complement the City's Asset Management Program. GPS data may be used during the course of vehicular incident or personnel disciplinary investigations.

Operating privileges shall be revoked if:

1. Driver does not adhere to responsibilities listed above.
2. The driver's license is revoked, suspended, withdrawn or denied.
3. Driver refuses to undergo drug or alcohol testing in accordance with organizational policies or as required by applicable state or local jurisdiction.
4. Operating outside the limitations of a restricted license.

I, _____, have read and understand the Business Use Policy established by [Department], I agree to abide by the provisions of this policy. I understand that violation of this policy will result in disciplinary action, up to and including termination of employment.

Driver Signature: _____ Date: _____

Supervisor Signature: _____ Date: _____

Appendix D
Administrative Code Section 4.11

FOR INFORMATIONAL PURPOSES ONLY

SEC. 4.11. USE OF CITY-OWNED VEHICLES.

- (a) Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of municipal business. No officer, employee or authorized volunteer of the City and County shall use any such vehicle without the consent of the head of such department. The head of the department which has jurisdiction over any such vehicle may not assign any such vehicle to any individual officer or employee unless a written request justifying the need for personal assignment is made by the individual officer or employee and approved by the Director of Administrative Services.
- (b) No vehicle owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County shall be used for transportation to and from an employee's place of residence except as provided below:
 - (1) The employee resides in or both resides and works outside of the City and County and is on call for work after his or her normal workday is completed and the nature of the work has required the use of a City and County vehicle after hours on at least five (5) occasions in the preceding twelve (12) month period; or
 - (2) The employee resides in or both resides and works outside of the City and County and must leave his or her residence prior to 8:00 a.m. on City and County business away from his or her normal place of work; or
 - (3) The employee resides in or both resides and works outside of the City and County and would return to his or her normal place of work from an appointment on City and County business after 6:00 p.m. or on a weekend; or
 - (4) The employee is a member of the San Francisco Police Department or San Francisco Sheriff's Department, or an employee of the San Francisco Water Department, San Francisco Department of Public Works, San Francisco Department of Emergency Services, San Francisco Office of Citizen Complaints or San Francisco District Attorney's Office, and has the prior written permission of the department head to use a vehicle equipped with emergency equipment for such purpose, subject to such restrictions and regulations as the Chief of Police, Sheriff, Director of Emergency Services, Director of the Office of Citizen Complaints or District Attorney may provide for the respective departments. The departments shall keep detailed records of all vehicles used pursuant to this paragraph; said records shall be open to inspection by the Office of the Mayor and the Board of Supervisors; and provided further that the number of vehicles so exempted shall not exceed:

San Francisco Water Department 42

San Francisco Police Department 33

Citywide Vehicle Use Policy (October 2014)

San Francisco Sheriff's Department	5
San Francisco Department of Emergency Services	2
San Francisco Department of Public Works	17
San Francisco Office of Citizen Complaints	4
San Francisco District Attorney's Office	8

- (5) The employee is a forensic pathologist employed by the Office of the Medical Examiner and has prior written permission of the Medical Examiner to use a City and County vehicle and is on call before or after normal work hours in order to respond to and investigate death scenes. The Medical Examiner shall keep detailed records of all vehicles used pursuant to this subsection; said records shall be open to inspection by the Director of Administrative Services and the Board of Supervisors; and provided further that the number of vehicles so exempted shall not exceed two vehicles; or
- (6) The employee is a resident of the City and County of San Francisco and is driving the vehicle to and from the employee's place of residence solely for the purpose of garaging the vehicle at his or her place of residence during nonworking hours, with the approval by resolution of the Board of Supervisors, upon the recommendation of the Director of Administrative Services, where the head of the department which has jurisdiction over such vehicle finds that the public interest will be best served by permitting the employee to take the vehicle home, rather than require the City to garage the vehicle.
- (c) Penalty. Any employee violating the provisions of this Section shall pay to the City and County an amount equal to three times the City and County's mileage reimbursement rate times the number of miles driven in violation thereof.
- (d) Except as otherwise provided by ordinance, an authorized volunteer, while operating a motor vehicle owned by the City and County pursuant to authorization by the head of the department to which said vehicle is assigned or which has jurisdiction over said vehicle, shall be deemed to be an employee of the City and County solely for purposes of California Vehicle Code Section 17001 and Division 3.6 of Title 1 of the Government Code of the State of California, and for no other purpose; provided, however, that nothing herein contained shall be deemed to permit the authorization to operate a motor vehicle owned, leased or rented by the City and County contrary to the provisions of the Vehicle Code of the State of California.

(Amended by Ord. 562-79, App. 11/16/79; Ord. 358-93, App. 11/15/93; Ord. 278-96, App. 7/3/96; Ord. 410-97, App. 10/31/97; Ord. 35-04, File No. 031934, App. 3/19/2004)

EXHIBIT 13



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

Human Resources Administration
1155 Market Street, 4th Floor
San Francisco, CA 94103 - 1523
Main: (415) 554-6000
Fax1: (415) 554-6025
Fax2: (415) 554-6042

Via Email and Hand Delivery

Prjas3@gmail.com

August 27, 2019

Jose Santiago
[REDACTED]
[REDACTED]

Re: Notice of Disciplinary Suspension Date

Dear Mr. Santiago:

In accordance with the attached *Skelly* Decision approved by Mohammed Nuru, Director, San Francisco Public Works, please be advised that you are being suspended without pay for 1 work day. The date of your suspension will be as follows:

- **Wednesday, September 4, 2019**

You are not permitted to return to work during the suspension nor are you permitted to work any overtime during the pay period in which the suspension is served.

Should you have any questions, please feel free to contact Jason Jimenez, Senior Employee and Labor Relations Analyst at 415-695-2033.

Sincerely,

A handwritten signature in blue ink, appearing to read "Svetlana Vaksberg", with a horizontal line extending to the right.

Svetlana Vaksberg
Employee and Labor Relations Division Director

Enclosure: *Skelly* Decision for a 1 Day Suspension

cc: Carla Short, Superintendent, Bureau of Urban Forestry,
San Francisco Public Works
Jason Jimenez, Senior Employee and Labor Relations Analyst,
General Services Agency-Human Resources
Official Employee Personnel File – Santiago, Jose

City and County of San Francisco



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

General Services Agency

Human Resources Administration
1155 Market Street, 4th Floor
San Francisco, CA 94103 - 1523
Main: (415) 554-6000
Fax1: (415) 554-6025
Fax2: (415) 554-8042

MEMORANDUM

TO: Mohammed Nuru, Director, San Francisco Public Works
THROUGH: Larry Stringer, Deputy Director for Operations, San Francisco Public Works *LS*
FROM: Lawlun Leung, Senior Employee and Labor Relations Analyst *LL*
DATE: August 15, 2019
SUBJECT: Jose Santiago, 3417 Gardener
Skelly Decision Regarding Recommendation for a One (1) – Day Suspension

On July 24, 2019 a *Skelly* hearing was held for Jose Santiago, class 3417 Gardener, employed with the San Francisco Public Works, Bureau of Urban Forestry (Department). The purpose of the hearing was to provide Mr. Santiago the opportunity to respond to the following charges:

- 1. Violation of Attendance and Punctuality Policy;
- 2. Continued Excessive Absenteeism; and
- 3. Continued Pattern of Sick Leave Abuse

At issue is whether there is sufficient reason to uphold the Department’s recommendation for a one (1) day suspension due to the above-listed charges. After reviewing the information provided by the Department and Mr. Santiago, it is my recommendation to uphold the charges and the one-day suspension.

APPROVED: 
MOHAMMED NURU
DIRECTOR, SAN FRANCISCO PUBLIC WORKS

BACKGROUND

On August 31, 2013, San Francisco Public Works (Department) hired Jose Santiago to a 3417 Gardener, Permanent Civil Service (PCS) position.

On July 16, 2018, Mr. Santiago was placed on a sick leave restriction (SLR) for excessive sick leave use. In October 2018, he received a written counseling for not following the SLR because he did not submit a doctor's note for his sick leave use. In February 2019, Mr. Santiago received a Reprimand for not following the SLR.

From the July 16, 2018 SLR to May 10, 2019, he called in sick on 61 days. The absences were not pre-approved. Of the 61 days, 59 days were taken before or after your weekend, vacation, or holiday. He called in sick 42% of the time and only worked 58% of the time.

He continues to have excessive absenteeism and a pattern of sick leave abuse.

SKELLY HEARING

On July 24, 2019, a *Skelly* hearing was held at 2323 Cesar Chavez Street, Blue Trailer Conference Room. Present at the *Skelly* hearing were Mr. Santiago; Carla Short, Superintendent Bureau of Urban Forestry; Nicholas Crawford, Assistant Superintendent Bureau of Urban Forestry; and Jason Jimenez, Senior Employee and Labor Relations Analyst, General Services Agency. Mr. Santiago did not have a representative present. I, Lawlun Leung, Senior Employee and Labor Relations Analyst, General Services Agency, served as the *Skelly* hearing officer.

At the *Skelly* hearing, Mr. Santiago was given the opportunity to respond to the Department's Notice of Proposed Disciplinary Action.

The *Skelly* process is an opportunity to obtain information that can confirm, exonerate or mitigate the conduct of an employee. This information may affect the imposition of discipline or the type of discipline. My role as the Skelly Hearing Officer is to be an impartial, non-involved reviewer of the facts involved in a disciplinary matter. My role is not to substitute judgment with respect to the discipline to be imposed, but rather to reach a conclusion as to whether, based upon the record, there are reasonable grounds to proceed with the proposed discipline, or whether it should be modified or revoked.

My review and analysis of the information provided by all parties is as follows:

FINDINGS

Charge 2: Continued Excessive Absenteeism

The Department's evidence showed that Mr. Santiago called in sick 61 days from July 16, 2018 to May 10, 2019. Mr. Santiago argued that the Department's calculation of 61 days was inaccurate. He believed that Human Resources had approved one leave as Family Medical Leave Act (FMLA) protected and later approved leave as Reasonable Accommodation from April through July of 2019. I requested that he provide me evidence that would show the absences were approved by Human Resources.

On July 25, 2019, Mr. Santiago sent me copies of correspondence between himself and Human Resources and the Department related to his absences from April through July 2019. Of note was a letter he received from Mr. Jimenez dated July 3, 2019 titled, "Unapproved Leave and Notice to Return to Work." (**Exhibit 1**)

The letter confirmed Mr. Santiago's claim that the Department approved his time as a Reasonable Accommodation, "From April 8, 2019 through June 29, 2019, you were off work on a continuous leave. Since you did not work the required 1250 hours in a consecutive 12 months, you did not qualify for Family Medical Leave Act and California Family Rights Act leave protections. The Department approved your leave as a reasonable accommodation." During this time period, Mr. Santiago was absent from work a total of 25 days.

Since the Department approved this time as Reasonable Accommodation those dates should not have been considered as evidence to support the proposed discipline. Deducting the 25 days from the Department's original 61 days, results in a total of 36 absences (or 288 hours) in the span of 10 months.

Per the Department's practice, "excessive absences" is defined as hours used in excess of 88 sick leave hours within a rolling 12-month period. With 288 hours of sick leave used, Mr. Santiago absences were still excessive.

Therefore, the Charge of Continued Excessive Absences is SUSTAINED.

Charges 1 and 3: Violation of Attendance and Punctuality Policy and Continued Pattern of Sick Leave Abuse

Mr. Santiago challenged the validity of the Sick Leave Restriction that the Department placed him on in July of 2018. He asserted that there were dates in which he worked, but the Department marked him as absent. Mr. Santiago said that he brought this issue to the Department's attention but it was left unresolved. He also claimed that his sick leave hours were "disappearing" from his paystub and thus reflected a smaller amount than it should have been.

When asked for the Department response, Ms. Short said that she gave Mr. Santiago time to provide proof and delayed issuing the February 2019 Reprimand for failing to provide doctor's notes as required by the Sick Leave Restriction. She never received documentation from Mr. Santiago, so she proceeded with the reprimand. Ms. Short added that she had requested a review of Mr. Santiago's leave balance by the GSA's Payroll unit and they reported his leave balance as accurate.

I requested that Mr. Santiago send me any evidence he had that would show the Department's attendance records as inaccurate.

After the *Skelly* meeting, Mr. Santiago sent me copies of text messages from July 17, 2018 that were originally sent to Ms. Short's attention. (**Exhibit 2**) In summary, Mr. Santiago provided Ms. Short seven dates that he was concerned about which were:

- July 17, 2017
- September 22, 2017
- October 20, 2017
- January 4, 2018
- January 12, 2018
- May 24, 2018
- June 14, 2018

The relevant time period from the Department's *Skelly* notice is July 16, 2018 to May 10, 2019. Since the disputed dates were over a year prior, the dates were not relevant to the hearing.

Mr. Santiago explained that he was absent from work because he felt work was a stressful environment and that he was dealing with his own personal health issues. However, Mr. Santiago failed to substantiate why his absences occurred adjacent to his weekends, vacations, or holidays. Mr. Santiago's excessive and pattern absences demonstrate that he continues to engage in sick leave abuse and is a violation of the City's Attendance and Punctuality Policy.

Therefore, all Charges are SUSTAINED.

RECOMMENDATION

After consideration of the information provided by the Department and Mr. Santiago, I uphold the Department's recommendation that Mr. Foster receive a one (1) day suspension.

EXHIBITS

1. July 3, 2019, Unapproved Leave and Notice to Return to Work
2. Copies of Text Messages from Mr. Santiago to Ms. Short

EXHIBIT 1

City and County of San Francisco



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

General Services Agency

Human Resources Administration
1155 Market Street, 4th Floor
San Francisco, CA 94103-0903
Main: (415) 554-6000
Fax1: (415) 554-6025
Fax2: (415) 554-4827

Via U.S. Mail & E-mail
prjas3@gmail.com

July 3, 2019

Jose Santiago III
[REDACTED]

Re: Unapproved Leave and Notice to Return to Work

Dear Mr. Santiago:

This serves as an update on your leave status and return to work with the City and County of San Francisco (City) and San Francisco Public Works (Department). You are employed as a Permanent Civil Service (PCS) 3417 Gardener with the Bureau of Urban Forestry (BUF).

We are concerned about your absence and hope your recovery is progressing well. At the same time, we need to meet the Department's responsibilities in serving the public and make sure the job for which you are responsible gets done.

I. Continuous Long Term Leave

From April 8, 2019 through June 29, 2019, you were off work on a continuous leave. Since you did not work the required 1250 hours in a consecutive 12 months, you did not qualify for Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA) leave protections. The Department approved your leave as a reasonable accommodation.

In a Work Status Report, dated April 29, 2019, your healthcare provider, Dr. Kenneth Ping Cuang M.D., prescribed you to be off work from April 29, 2019 through June 29, 2019. Dr. Cuang also prescribed that you are able to return to work at full capacity on July 1, 2019. The Department anticipated your return to work on July 1, 2019.

To date, you have not reported to work and have not provided any additional documentation from your healthcare provider authorizing you to be off work. Please be advised that your absence is considered as unapproved leave and will be marked absent without leave (AWOL).

II. Automatic Resignation

Please be advised that employees who do not receive an approved leave extension, or who do not return to work when they are expected may be subject to disciplinary action or automatic resignation.

Please be advised that pursuant to Civil Service Commission Rule 120.1.6 states:

Except as otherwise provided in these Rules, leave granted for the period stated on the prescribed form may be extended or abridged only with the approval of the appointing officer or designee. An employee who does not return to work on the approved date shall be deemed as away without official leave and shall be subject to automatic resignation as provided elsewhere in these Rules.

Employees who are absent from work for more than five (5) days are considered to have abandoned their job and the Department will move forward with processing an automatic resignation. Please be advised that Civil Service Commission Rule 122.11.1 states in relevant part:

Absence from duty without proper authorization in excess of five (5) continuous working days shall constitute abandonment of the position and shall be reported to the Department of Human Resources and recorded as an automatic resignation.

It is important that you return to work immediately or provide an updated healthcare provider information. You can contact me at 415-695-2033 or jason.jimenez@sfgov.org immediately. If I do not hear from you by close of business on Wednesday, July 10, 2019, the Department will proceed with processing an automatic resignation from your employment.

V. Other Resources

If you are unable to return to City employment, you may resign or, if you qualify, request a disability, service, or vested retirement. If you would like to pursue one of these options, please consult with the San Francisco Employees' Retirement System located at 1145 Market Street, 5th Floor, San Francisco, CA 94103, or by calling (415) 487-7000. You may request additional information or schedule an appointment with a Benefits Analyst.

Sincerely,



Jason Jimenez
Senior Employee and Labor Relations Analyst

cc: Carla Short, Superintendent, BUF, San Francisco Public Works
Clarence Robinson, Area Supervisor, BUF, San Francisco Public Works

EXHIBIT 2

'carla....



Jose A. Santiago III

to Carla.Short

Jul 18, 2018 [Details](#)



Here are the dates I'm concerned about.

- 07/17/2017
- 09/22/2017
- 10/20/2017
- 01/04/2018
- 01/12/2018
- 05/24/2018
- 06/14/2018

I was also wondering if you knew that on 07/28/2017 I filed a discrimination claim with California Department of fair employment and housing? Just a FYI in case you didn't know.

Thank You



Short, Carla (DPW)

Ok, I'll pull the sign in sheets for these dates. Thank you for the FYI. I was not aware.

'carla.... |



Hi Jose,

I can't see the phone records, that you're referring to in the email.

The list below is from payroll downtown, not from CMMS.

If there is a discrepancy, please bring me the records that you are referring to that demonstrates this and we will review.

Thanks,
Carla



'carla....



Thank You



Short, Carla (DPW)

Ok, I'll pull the sign in sheets for these dates. Thank you for the FYI. I was not aware



Jose A. Santiago III

to me

Oct 31, 2018 [Details](#)



Thank You

Begin forwarded message:

From: "Jose A. Santiago III"

[<prjas3@gmail.com>](mailto:prjas3@gmail.com)

Date: July 18, 2018 at 12:33:07 PM PDT

To: Carla.Short@sfdpw.org

Subject: Dates for sp



'carla....



Phone records Inbox



Jose A. Santiago III



Short, Carla (DPW)

Ok, thanks for sending. I think we should sit down and review. Can you come to my office tomorrow?



Jose A. Santiago III

Ok no problem for some reason the 1st email I sent they disappeared. I will be there tomorrow!



Jose A. Santiago III

to me

Oct 31, 2018 [Details](#)



mail.google.com



'carla.... |



Sick leave restriction

Inbox

**Jose A. Santiago III**

to Carla.Short

Jul 17, 2018 [Details](#)

I have been falsely put on sick leave restriction. D'Jayda Durden and Clarence Robinson both have been told that as of lately my time doesn't seem accurate and that I'm getting suspicious. Included here I have pictures of the days the system has me SP and my phone records that show different. I also attached a picture of employee Johnny Silas that today the system has as SP on 07/17/18 and he is here present at work. The discrimination that I constantly sustain at the Department of Public Works is unfair and in direct violation of California employment and fair housing. I need this to be fixed ASAP and taken off my file.

3 attachments

Page 103



'carla....



Hi Jose,

I can't see the phone records, that you're referring to in the email.

The list below is from payroll downtown, not from CMMS.

If there is a discrepancy, please bring me the records that you are referring to that demonstrates this and we will review.

Thanks,
Carla



'carla....



Short, Carla (DPW)

Ok, I'll pull the sign in sheets for these dates. Thank you for the FYI. I was not aware.



Jose A. Santiago III

to me

Oct 31, 2018 [Details](#)



Thank You

Begin forwarded message:

From: "Jose A. Santiago III"

[<prjas3@gmail.com>](mailto:prjas3@gmail.com)

Date: July 18, 2018 at 12:33:07 PM PDT

To: Carla.Short@sfdpw.org

Subject: Dates for sp

'carla....



IMG_0212.jpg · Print



Short, Carla (DPW)

to me

Jul 17, 2018 [Details](#)



This message has been modified to fit your screen. Tap here to show original.

Hi Jose,

I can't see the phone records, that you're referring to in the email.

The list below is from payroll downtown, not from CMMS.



EXHIBIT 14



Exhibit I

Santiago Notice of Proposed
Dismissal



Alaric Degrafinried, Acting Director | Director's Office

alaric.degrafinried@sfdpw.org | T. 628.271.2677 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

Via Hand Delivery

July 29, 2021

Jose Santiago



Re: Notice of Proposed Dismissal from Employment with the City and County of San Francisco and Skelly Meeting

Dear Mr. Santiago:

This is to inform you that San Francisco Public Works (Department) is recommending to dismiss you from your position as a permanent civil service (PCS) 3417 Gardener. The Department has scheduled a *Skelly* meeting on **August 19, 2021 at 11:00 a.m. at 2323 Cesar Chavez Street, Building A, SSR Conference Room, San Francisco, CA 94124** to address the charges. The meeting will provide you the opportunity to respond to the charges and proposed dismissal of employment. You are entitled to representation and may bring a representative to the *Skelly* meeting.

Please note that due to the current pandemic, the *Skelly* meeting officer will be attending via videoconferencing. If you prefer to join the hearing via video conferencing, please inform Jason Jimenez, Senior Employee and Labor Relations Analyst, City Administrator Human Resources, at (415) 695-2033 or via email at Jason.Jimenez@sfgov.org by August 18, 2021 so he can email you a link to the meeting. You must download the Microsoft Teams video conferencing application to your phone or computer if you choose this option.

CHARGES

The charges that support the proposed discipline are as follows:

1. Dishonesty.
2. Misuse of City Time and Resources.
3. Violation of Department Policy and Procedures (Leaving Assigned Work Area).
4. Violation of City's City Vehicles Policy; Citywide Vehicle Use Policy; and Department's City Vehicle Use Policy.
5. Violation of City's Attendance and Punctuality Policy.

BACKGROUND

On August 31, 2013, the Department hired you to a 3417 Gardener, PCS position. You are assigned to Bureau of Urban Forestry (BUF). You perform maintenance and landscaping renovation tasks to care for the City’s athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas.

A. Prior Discipline

In 2020, you received a 10-day suspension for misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area, failing to notify supervisor after completing work early; violation of the City’s Attendance and Punctuality Policy; and dishonesty. These charges were based on your misconduct as follows: (1) On September 24, 2019, you and your co-worker failed to report to their assigned work location and spent 79 continuous minutes driving to Golden Gate Park, which is 3.8 miles away from the assigned work location; (2) On September 25, 2019, you and the same co-worker arrived late to the assigned work location and could not account for your time; and (3) on September 25, 2019, after completing your assignment, you and your co-worker drove around in the City vehicle for 96 continuous minutes; the vehicle was stopped ten miles away from the assigned work location.

Your dishonesty; misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area; and violation of City’s Attendance and Punctuality Policy has continued.

B. December 1, 2020 Whistleblower Complaint

The Department received a Whistleblower Complaint from the City’s Whistleblower Program that on December 1, 2021 at approximately 12:15 p.m., a Department employee (Hispanic with shaved head) dropped off 20 rolls of sod owned by the City to a private residence at 370 Naples Street driving a white twin cab pick-up vehicle 450-608. The Whistleblower program provided the GPS report for 450-608. GPS showed the vehicle stopped at the following locations:

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
Sloat Blvd at Sunset Avenue	14 minutes	11:29 a.m. to 11:50 a.m. (21 min)
377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

On February 25, 2021, City Administrator Human Resources (CAHR) was asked to further investigate the complaint.

RECORDS AND INFORMATION

In addition to the GPS records, the following records were reviewed:

1. Keywatcher

The Department's Keywatcher report identifies the names of employees who take and return City vehicle keys and when the keys were taken. The December 1, 2020 Keywatcher report for City vehicle 450-608 identifies Douglas Reed, 3422 Park Section Supervisor and your supervisor as taking out the keys at 4:49 a.m. and you as returning the keys to the vehicle at 12:52 p.m. Due to COVID-19 safety protocols, the Department implemented safety procedures whereby supervisors check out keys on behalf of their employees to reduce the number of people gathering at the key watch system.

2. GPS Records

GPS records show that you drove City vehicle 450-608 to Sloat Blvd. and Sunset Avenue where the Department stored sod, where you remained for 21 minutes. Thereafter, you drove the City vehicle to 377 Naples Street where you remained for 11 minutes.

3. Payroll and Time Records

On December 1, 2020, you reported working 6 hours and was AWOL for 2 hours. Your work schedule was supposed to be at 5:00 a.m. through 1:30 p.m. but you actually started working at 7:06 a.m.

4. Cost of Sod

The City paid approximately \$4.25 per roll for the sod so 20 rolls of sod would cost approximately \$85.00.

5. Your Picture from the City's PeopleSoft Records

Jose A Santiago III



FINDINGS AND ANALYSIS

Attached to this notice as Exhibit 1 is a copy of the investigation report (Report) and exhibits. The Report details the evidence supporting the charges. Based on the pervasiveness, extent, and the gravity of your misconduct as discussed in the Report, the Department is recommending that you be dismissed from your employment with the Department and the City. The charges against you are as follows:

Charge 1: Dishonest and Not Credible

You were found to be dishonest and not credible for the following reasons:

1. You denied that on December 1, 2020 at approximately 12:15 p.m., you dropped off 20 rolls of sod at 370 Naples Street in City vehicle 450-608. However, it is undisputed that you worked on December 1, 2020, was assigned to City vehicle 450-608, and that GPS records confirm that City vehicle 450-608 drove to Sloat and Sunset (where sod was stored), and then drove to 377 Naples Street. Moreover, the individual who made the complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify you as a Hispanic and you have a shaved head.
2. You alleged that Reed said the sod was going to go to waste and told staff to take the leftover sod if they wanted. All five witnesses interviewed from the crew said that they did not hear Reed tell staff that they can take the sod. Rather, they heard Reed tell Gonzales and Roberts to take the sod to the dump. Therefore, it is more likely than not that you were dishonest and Reed did not tell staff that they can take the sod.

Charge 2: Misuse of City Time and Resources

The City's Use of City and County Property for Business Purposes Only Policy contained in the City's Employee Handbook states in relevant part:

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited.

On December 1, 2020, you misused City resources when you took sod, which is City property, without approval, and dropped off 20 rolls of sod to a private residence at 370 Naples Street. GPS records confirm that you drove to the location where the Department's sod was stored and was there from 11:29 a.m. to 11:50 a.m. and then from there you drove to 370 Naples Street, where you remained from 12:12 p.m. to 12:23 p.m. Moreover, the Whistleblower complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify you as a Hispanic and you have a shaved head.

Additionally, on December 1, 2020, you reported late to work by 2 hours, you were supposed to start work at 5:00 a.m. but did not start officially working until you started driving City vehicle 450-608 at 7:06 a.m.

From 7:06 a.m. to 8:14 a.m., you misused City time and resources when you were not at your assigned work location and instead drove and parked at one non-work location at 4228 Ocean Avenue. Your work assignment was at Junipero Serra Boulevard at Ocean Avenue. GPS records show that you arrived at that work location at 8:25 a.m. and that the vehicle was parked there for 2 hours and 1 minute. Thereafter, you misused City time and resources again when you were not at your assigned work location and instead drove and parked at four more non-work locations.

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
Sloat Blvd at Sunset Avenue	14 minutes	11:29 a.m. to 11:50 a.m. (21 min)
377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

Since you were AWOL for two hours (from 5:00 a.m. to 7:00 a.m.) and was at your assigned work area (Junipero Serra Blvd) for only two hours, you misused four hours of City time that day.

Charge 3: Violation of Department Policy and Procedures (Leaving Assigned Work Area)

The March 16, 2016 Appropriate Use of City Vehicles policy memo from Larry Stringer, former Deputy Director for Operations states in relevant part:

All field employees are required to take coffee and lunch breaks within their assigned areas if you must leave your area for any reason, you must contact your supervisor for approval before hand. City vehicles must remain in their assigned districts.

As discussed above, on December 1, 2020, you drove to and parked your City vehicle at five different locations which were outside of your assigned work area that day.

You did not notify your supervisor that you would stop at those five locations that are not your assigned work areas. There was also no record of any service orders or special projects to be fulfilled at those locations that day, thus you were in violation of Department policy for leaving your work area without supervisor authorization.

Charge 4: Violation of City’s City Vehicles Policy, the Citywide Vehicle Use Policy, and the Department’s City Vehicle Use Policy.

The City’s Vehicles Policy contained in the City’s Employee Handbook states in relevant part:

Like all City resources, City vehicles are to be used for City business only. City vehicles may not be used for personal business. Employees who violate the Vehicle Code or any other applicable laws and City policies in City vehicles may be subject to disciplinary action, up to and including termination.

The Citywide Vehicle Use Policy states in relevant part:

Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of City business.

The November 2, 2017 City Vehicle Use Policy memo from Larry Stringer, former Deputy Director for Operations (DDO) states in relevant part:

All City vehicles are for official City business use only. Employees may not use a City vehicle for personal errands.

On December 1, 2020, you violated the City's City Vehicles Policy contained in the City's Employee Handbook; the Citywide Vehicle Use Policy; and the DDO's City Vehicle Use Policy memo when you used a City vehicle and City resources for non-City business when you drove and parked your City vehicle at five non-work locations.

Charge 5: Violation of City's Attendance and Punctuality Policy

The City's Attendance and Punctuality Policy contained in the City's Employee Handbook states in relevant part:

Regular and prompt attendance is an essential requirement of your job. As a City employee, you are to report to your work station at your scheduled work time. Your time records must accurately reflect the time you start work and the number of hours worked in every work day.

On December 1, 2020, you were instructed to work at the Junipero Serra Boulevard Project where you worked from 8:25 a.m. to 10:26 a.m., for a total 2 hours. You left the Junipero Serra Boulevard Project at 10:26 a.m. and after did not perform any more work that day as you drove and parked the City vehicle at five non-work locations.

While you were paid for working 6 hours from 7:00 a.m. to 1:00 p.m., you did not work the entire 6 hours. You only spent a total of 2 hours at your assigned work area. You violated the City's Attendance and Punctuality policy when you did not accurately reflect the time you worked on December 1, 2020.

On November 21, 2014, you acknowledged you read and understood the City Employee Handbook.

You have a History and Pattern of Misusing City Resources, Being Dishonest and Violating City and Department Policies

On September 24 and 25, 2019, you engaged in similar misconduct as addressed in this investigation because you failed to report to the work sites on time and instead drove around the City in a City vehicle without performing any work; you reported working for more hours than you actually did. You were also found to be dishonest when questioned about your whereabouts and actions. Although you served a 10 day-suspension from June 3 to 16, 2020, six months later, you again engaged in the same misconduct when he took 20 rolls of sod and dropped it off at a private residence and then drove to various locations which were not your assigned work locations.

PAST CORRECTIVE AND DISCIPLINARY ACTIONS

1. 2020 Ten-Day Suspension: Dishonesty; Misuse of City Time and Resources; Violation of Department Policy and Procedures: Leaving Assigned Zone, Notifying supervisor after completing work early, Using Skidsteer; and Violation of the City's Attendance and Punctuality Policy.
2. 2019 One-Day Suspension: Continued excessive absenteeism; continued pattern of sick leave abuse; and violation of attendance and punctuality policy.

SKELLY MEETING

You are entitled to bring a representative to the *Skelly* meeting. You are not required to attend the *Skelly* meeting and instead, you may submit a written response with any relevant written materials for the *Skelly* officer and the Department to consider before making a final decision. If you choose this option, you must submit your written materials to Jimenez at Jason.jimenez@sfgov.org or 2323 Cesar Chavez Street, Building A, San Francisco, CA 94124 by close of business on August 18, 2021.

If you need to reschedule the *Skelly* meeting, you must inform Jimenez at (415) 695-2033 by August 18, 2021. Please be advised that the Department allows for only one reschedule of the *Skelly* meeting. If you neither appear at the meeting nor submit any written materials, the meeting officer and the Department will make a decision based on the materials referenced in this letter and the attachments. If you have any questions in this matter, please contact Jimenez.

Sincerely,



Alaric Degrafinried
Acting Director, San Francisco Public Works

cc: DiJaida Durden, Deputy Director for Operations
Carla Short, Superintendent, Bureau of Urban Forestry
Jason Jimenez, Senior Employee and Labor Relations Analyst
Personnel File

EXHIBITS

1. 2021 Investigatory Report

Exhibit J

Santiago Skelly Response
Email

From: [Jimenez, Jason \(ADM\)](#)
To: [Franklin, Jesse \(DPW\)](#)
Subject: FW: Skelly response with attached documents
Date: Wednesday, October 18, 2023 10:03:58 AM
Attachments: [Harassment notice.pdf](#)
[J. Santiago Complaint - signed.pdf](#)

From: [REDACTED] >
Sent: Tuesday, September 7, 2021 11:23 AM
To: Jimenez, Jason (ADM) <jason.jimenez@sfgov.org>
Cc: Theresa Foglio <laborers261@gmail.com>; Crawford, Nicholas (DPW) <nicholas.crawford@sfdpw.org>; Short, Carla (DPW) <Carla.Short@sfdpw.org>
Subject: Skelly response with attached documents

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

Packet Delivery date:

Mr Santiago states he received the Skelly Packet on August 16th. The Date of delivery recorded on the actual Skelly packet states it was hand delivered to Jose Santiago on July 29th. Mr. Santiago also states it was hand delivered to him in the BUF trailer with a witness there by the name of Patty (BUF secretary).

Exhibit 2:

Whistle blower states the truck started with 450 but could not see the remaining three numbers

Exhibit 3:

According to the picture log, it states Driver as name "unassigned". Also, in the picture the time frame is 11:50am-12:12pm at the suspected location.

Finding analysis III (B):

Records in this picture log show a different time frame from **Exhibit 3**. Records here in **Finding analysis III (B)** indicate a time frame from 12:12pm-12:28pm at the suspected location. This is a total Discrepancy.

Based on your evidence and witness's statements, results are inconclusive. Mr. Santiago is not in any of the pictures presented, nor was any City Of San Francisco vehicles. Also Supervisor Douglas Reed gave a statement indicating that this incident happened after the COVID-19 pandemic outbreak. Mr Santiago indicated that Mr. Reeds statement is false, and the project at Balceta Ave. actually happened prior to the Covid-19 pandemic outbreak. Mr. Santiago indicated that the City & County of San Francisco (Bureau of Urban Forestry) has falsified these documents. **Penal Code 115 PC** is the California statute that makes it a crime for a person to knowingly file, register, or record a false or forged document in any public office within the state. A violation of this section is a felony offense that is punishable by up to three years in jail or prison.

(Please find attached documents)

Exhibit K
Santiago Skelly
Recommendation



SKELLY MEETING DECISION

TO: Carla Short, Interim Public Works Director

THROUGH: Dijaida Durden, Deputy Director of Operations *2.0.*
San Francisco Public Works

FROM: Breonna Santiago, Human Resources Analyst, City Administrator Human Resources

DATE: October 22, 2021

SUBJECT: Jose A. Santiago III, PCS 3417 Gardener,
Skelly Decision Regarding Recommendation for Dismissal from Employment

On August 31, 2021 a *Skelly* meeting was held for Jose A. Santiago III PCS 3417 Gardener, employed with the San Francisco Public Works, Bureau of Urban Forestry (BUF). The purpose of the meeting was to provide Mr. Santiago the opportunity to respond to the following charges:

1. Dishonesty;
2. Misuse of City Time and Resources;
3. Violation of Department Policy and Procedures (Leaving Assigned Work Area);
4. Violation of City's City Vehicles Policy; Citywide Vehicle Use Policy; and Department's City Vehicle Use Policy; and
5. Violation of City's Attendance and Punctuality Policy.

At issue is whether there is sufficient reason to uphold the Department's recommendation for Dismissal from employment with City and County of San Francisco due to the above-listed charges. After reviewing the information provided by the Department and Mr. Santiago it is my recommendation to uphold the charges and the proposed dismissal from employment.


APPROVED: 
Carla Short
Interim Director, SF Public Works

Exhibit L

Santiago Notice of Dismissal



Carla Short, Interim Director | Director's Office

carla.short@sfdpw.org | T. 628.271.3078 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

Via Hand Delivery

October 29, 2021

Jose Santiago

1473 G Street, M. 61
[Redacted]
[Redacted]

Re: Notice of Dismissal from Employment

Dear Mr. Santiago:

By receipt of this letter, you are notified that effective close of business October 29, 2021, you are dismissed from your employment as a permanent civil service (PCS) 3417 Gardener with San Francisco Public Works, Bureau of Urban Forestry (BUF).

The grounds for dismissal are as follows:

1. Dishonesty.
2. Misuse of City Time and Resources.
3. Violation of Department Policy and Procedures (Leaving Assigned Work Area).
4. Violation of City's City Vehicles Policy; Citywide Vehicle Use Policy; and Department's City Vehicle Use Policy.
5. Violation of City's Attendance and Punctuality Policy.

As you are aware, on August 31, 2021, a *Skelly* meeting was held. You did not attend the *Skelly* meeting but your union representative, Theresa Foglio-Ramirez attended the meeting. The *Skelly* Officer agreed to give you until September 7, 2021 to provide a written response. On September 7, 2021, you provided a written response.

Enclosed is a copy of the *Skelly* officer's recommendation that you be dismissed from your employment. After carefully reviewing all the information and materials in this matter, I concur with the *Skelly* officer's recommendation.

Attached please find the following:

1. Separation Report stating that you are being dismissed from your PCS 3417 Gardener;
2. Notice of Future Employment Restrictions;
3. *Skelly* Recommendation; and
4. Employee Assistance Program (EAP) brochure.

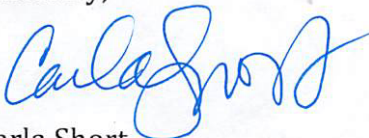
Any accrued vacation pay you may have remaining will be paid out to you within 30 days of the last day of your employment.

If you have health benefits questions, please call Health Services at (628) 652-4700. If you have San Francisco Employees' Retirement System (SFERS) or Deferred Compensation questions, please call SFERS Member Services at (415) 487-7000.

The City's Employee Assistance Program (EAP) is available to former employees, up to 30 days past the former employee's separation date. Attached is the EAP brochure.

If you have any questions, you can contact Jason Jimenez, Senior Employee and Labor Relations Analyst, City Administrator Human Resources (CAHR), at (415) 695-2033.

Sincerely,



Carla Short
Interim Director, San Francisco Public Works

Enclosures: A/S

cc: DiJaida Durden, Deputy Director for Operations
Nicholas Crawford, Acting Superintendent, Bureau of Urban Forestry
Jason Jimenez, Senior Employee and Labor Relations Analyst
Personnel File

Exhibit M

Miller Opinion and Award

IN ARBITRATION PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy between

CITY AND COUNTY OF SAN
FRANCISCO,

Employer,

And

LABORERS INTERNATIONAL UNION,
LOCAL 261,

Union.

Re: Termination of Jose Santiago

Arbitrator File No. 23-0014-LA

**ARBITRATOR'S
OPINION AND AWARD**

Neutral Arbitrator

Yuval Miller, Esq.

Appearances:

Employer: Carmen León
City and County of San Francisco

Union: Tiffany Crain
Winnie Vien
Weinberg, Roger & Rosenfeld, PC

Procedure:

Hearing: November 4 & December 15, 2022
San Francisco, CA

Submission: February 13, 2023

This arbitration arises under the Memorandum of Understanding (“MOU”) between the City and County of San Francisco (“City”) and the Laborers International Union, Local 261 (“Union”), pursuant to which the parties selected Yuval Miller as Arbitrator. The parties stipulated that all prior steps of the grievance procedure have been met or waived and the matter is properly before the Arbitrator for final-and-binding decision; and that the Arbitrator may retain jurisdiction over implementation of any remedy. The parties had a full opportunity to examine and cross-examine witnesses, present evidence, and submit argument.

INTRODUCTION

The City’s Department of Public Works (“DPW”) terminated Grievant Jose Santiago for dishonesty, misusing work time and resources, and violating vehicle-use and attendance policies based on his conduct on December 1, 2020. The City alleges that, after arriving to work two hours late that day, Grievant spent all but two hours of his shift away from his assigned work locations, taking sod from a DPW supply shack and dropping it off at a residential address for non-work reasons; and that Grievant has been dishonest about this conduct during the investigation, grievance process, and arbitration. The Union concedes that Grievant was two hours late on December 1, 2020, but otherwise contests the allegations, arguing that the City has failed to carry its burden to prove that Grievant engaged in any of the alleged conduct, particularly given its unreliable hearsay evidence and the fact that the significantly delayed investigation prevented Grievant from mounting a fair defense.

STIPULATED ISSUE

Was Grievant discharged for just cause; and, if not, what is the appropriate remedy?

KEY CONTRACT AND POLICY PROVISIONS

Memorandum of Understanding

....

I.D. MANAGEMENT RIGHTS

....

11. The City . . . retain[s] . . . [the] right to . . . terminate for proper cause.

....

City and County of San Francisco Department of Human Resources Employee Handbook

Policy Regarding Use of City And County Property for Business Purposes Only

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited. City resources include, but are not limited to, facilities, equipment, devices, . . . supplies and any time for which you are receiving compensation from the City. Inappropriate uses of City resources include, but are not limited to, . . . viewing or distributing materials that are not related to City business.

....

FACTS

With a few important exceptions, most material facts are not in dispute. The City hired Grievant in 2013 as a permanent employee with DPW. During his tenure, Grievant served as a 3417 Gardner, an Acting Supervisor, and a Captain; he also led summer youth programs with Mission Neighborhood Centers.

On December 1, 2020, the date of the incidents in question here, Grievant was assigned to the Bureau of Urban Forestry as a 3417 Gardener on Park Section Supervisor Douglas Reed's

crew, which had about a dozen employees. Reed's crew was working on two projects: (a) installing a park at Balceta Triangle; and (b) supporting Supervisor Amy Craven with tree planting on Junipero Serra Boulevard. Grievant testified that he got daily assignments from Reed either through the daily assignment sheet or orally. Reed testified that, on December 1, 2020, Grievant was assigned to assist Craven with the Junipero Serra tree-planting project; that Grievant's work schedule was 5:00am to 1:30pm; and that Grievant was not assigned to the Balceta Triangle project on that date.

It is undisputed that Grievant was late to work on December 1, 2020. Reed texted Grievant at 6:14am, "Are you coming in today." Grievant texted back at 6:15am, "I'm almost there . . . I hit sp line n said I would be there late. I'm about 10-15 minutes away." Reed texted back at 6:19am, "Ok because you have to take the title 6 training I'm waiting on you." Grievant testified that he does not recall when he arrived to work that day, but that he was frequently late during that period because of harassment at work and did not want to be at work. Grievant believes that Reed likely texted him at 10:30pm on November 30, 2020 to tell him he had a 5:00am start time on December 1, 2020—something they would sometimes fight about—and that he was late to work because he did not see the text until the morning of December 1, 2020. Payroll records show Grievant was charged with two hours of Absence Without Leave (AWOL).

During the COVID pandemic, a crew lead or supervisor would check out truck keys for all employees to avoid congregation at Key Watch, a storage unit for vehicle keys. Key Watch allows the City to run a Key Watcher Report identifying each employee who checked out and checked in keys to any vehicle.

The Key Watcher Report shows that Reed checked out Truck 450-608's keys at 4:49am on December 1, 2020, and that no member of his crew checked out any keys there. Reed testified that his crew members drove alone during the pandemic and did not share vehicles; that, after checking out keys, he handed a set of keys to each of his crew members other than Grievant—who was not there yet; that Truck 450-608 was assigned to Grievant; and that he left the keys for Truck 450-608 on its dashboard for Grievant per his usual absent-crewmember practice.

Truck 450-608 has a truck bed. Grievant testified that it was not vehicle to which he was normally assigned; that he did not like driving it; that he probably drove it at some point during his years with the City but does not recall when; that it was a crew-cab used for passengers; that he did not like passenger-transport; that he cannot recall what he drove on December 1, 2020; that, given he did not have a regularly assigned truck, he usually took the last truck left over or a coworker's vehicle; and that he was often the last person to leave the yard as a result.

Truck 450-608's December 1, 2020 GPS report shows it was at the following locations:

- 7:51am-8:14am: 4228 Ocean Ave, San Francisco, CA 94132¹
- 8:25am-10:26am: Junipero Serra Blvd., San Francisco, CA 94127
- 10:38am-11:15am: 566 Laguna Honda Blvd., San Francisco, CA 94127
- 11:29am-11:32am: Sloat Blvd., San Francisco, CA 94132
- 11:33am-11:50am: Sloat Blvd., San Francisco, CA 94132²
- 12:12pm-12:23pm: 377 Naples St., San Francisco, CA 94112³
- 12:25pm-12:31pm: 601 Excelsior Ave., San Francisco, CA 94112⁴
- After 12:55pm: 2234 Cesar Chavez St., San Francisco, CA 94124⁵

¹ 4228 Ocean abuts Lakeshore Plaza Shopping Center.

² The GPS report is not clear about what part of Sloat Blvd. the vehicle was on during either time period where that street is identified. According to the GPS report, the vehicle began a trip at 11:32:42am from the first Sloat location and ended that trip less than a minute later at the second Sloat location at 11:33:28am. Both Lakeshore Plaza and the intersection of Sunset and Sloat are within a block of each other on Sloat.

³ 377 Naples is across the street and two doors over from 370 Naples.

⁴ Don Chuy's is at 601 Excelsior, about half a block away from 370 Naples.

⁵ 2234 Cesar Chavez is the Key Watch address, where Grievant returned Truck 650-608's keys.

The Key Watcher Report shows that Grievant returned Truck 450-608's keys to Key Watch at 12:52pm on December 1, 2020. It is undisputed that Grievant had by that time completed his assigned work for the day: two hours of work assisting Craven at Junipero Serra.

Reviewing the GPS report, Reed gave uncontested testimony that the City had no business at Lakeshore Plaza on December 1, 2020, but that the facility at the nearby intersection of Sloat and Sunset stored sod at the time for the Balceta project, which was near 566 Laguna Honda; and that Grievant did not have a key to use the restroom at the Sloat-and-Sunset shack. It is also undisputed that DPW did have business that day at the Balceta project (to which Grievant was not assigned); but that DPW had no business near 377 Naples or 601 Excelsior that day.

Reed testified that, as of December 1, 2020, the sod at Sloat and Sunset was drying out from lack of water because there was no irrigation there; and that the sod was therefore thrown out in mid-December 2020. Grievant testified that at an unspecified point in time "Reed was getting nervous because we had so much sod left over, and we had like five pallets, and he was like take it to the dump, I don't care what you guys do with it, make it disappear. You guys want it, I ain't seen nothing." It is undisputed the sod was taken to the dump in mid-December 2020.

Reed testified that a roll of sod weighs about twenty to twenty-five pounds depending on whether it is wet; and that, if one person is unloading it from a truck, it would take less than a minute to unload each roll from the truck to the ground. Grievant testified that one roll of sod generally weighs "about fifty, sixty pounds. And I do know that there was a period of time when . . . it started raining. And we were watering that stuff like crazy, because it was dying, so that probably makes it more like seventy, eighty pounds"; that he would turn down overtime work with sod during that unspecified period of time because the sod was so heavy from being wet it

was killing him; and that, when the entire dozen-strong crew was asked to load sod during that unspecified period, it took about thirty minutes for one person to move twenty rolls off of a truck.

Grievant testified that he does not recall anything he did on December 1, 2020: he does not recall when he took breaks or what work he performed. Grievant also testified, however, that he did not take City sod on that or any other date—for himself or to give it to someone else.

Regarding the November to December 2020 time period more generally, Grievant testified that he and his coworkers would take breaks at Lakeshore Plaza (i.e., 4228 Ocean Ave.), frequently doing so between their official start time of 5:00am and 9:00am because work often did not begin until 9:00am; that after 9:00am work was “go, go, go”; that he and his coworkers took breaks every two to two-and-a-half hours; that he has maintained trees at the Junipero Serra location; that he has laid sod at the Laguna Honda/Balceta location; that he has purchased burritos at Don Chuy’s near the 377 Naples and 601 Excelsior locations; and that he and his coworkers would go to the Sloat-and-Sunset location for equipment, tailgate meetings, breaks, and to use the bathroom. According to Grievant, if Truck 450-608 was at the 377 Naples or 601 Excelsior locations on December 1, 2020, he was likely looking for parking to buy food at Don Chuy’s on the corner of Naples and Excelsior.

On December 1, 2020, the City received this anonymous Whistleblower Complaint:

DPW Worker dropped off about 20 rolls of Sod to a private residence at 370 Naples.
Driving a white twin cab pickup. Hispanic, shaved head. was there maybe 10 minutes
truck number started with 450
couldn’t see the remaining 3 numbers possible 681
small city emblem on door
Truck had a large sticker by the gas tank drivers side

The complainant cited the reason for submitting the Complaint as “giving away city property or using city vehicle for private purposes. abusing company time while working. Saw him try to

jump the gate and didn't make it." The complainant identified when the incident occurred as "12-01-20 about 1215pm" and added "saw him double park and unload the sod on 12-01-20 and left them in front of 370 Naples street."

Grievant testified that he has never used the 370 Naples address for any purpose and does not know Loida Torres, Irene Cartagena, or Dora Torres. In rebuttal, City Investigator Borys Procak gave impeachment testimony, testifying that he ran the November 16, 2022 CLEAR Search Report that is in the record; that CLEAR is a proprietary database comprised of information that credit bureaus compile; and that the Report shows 370 Naples Street in Grievant's address history for November 21, 2018. According to Procak, this shows Grievant was "associated" with the address that day: he affirmatively used it in connection with a transaction that would be registered by a credit bureau; such a transaction could mean, for example, that Grievant resided at the address, applied for a bank account or credit card with the address, or otherwise generated information by using the address. The Report identifies other individuals "associated with" the address (i.e., who used the address in transactions) during certain time periods, including Irene Cartagena (March 1, 2007 to February 3, 2020); Loida Torres (August 31, 2015 to May 20, 2020); and Dora Torres (July 10, 2004 to July 18, 2022). The Union did not call a witness in surrebuttal. Grievant did not testify regarding the Credit Report.

The Whistleblower Program conducted a preliminary investigation. It pulled the above GPS report and saw that Grievant was driving Truck 450-608 and that truck was next to 370 Naples at the same time and date flagged by the Whistleblower. On February 25, 2021, the City Administrator's Office initiated a DPW investigation. Senior Employee and Labor Relations Analyst Jason Jimenez, who conducted the investigation, discovered that Grievant had already

received two hours of AWOL for being late on December 1, 2020; that Grievant was paid for the remaining six hours of his workday; and that Grievant is a bald Hispanic male.

Jimenez testified that his investigation found Grievant had received a 10-day suspension for misconduct on September 24 and 25, 2019 exhibiting “similar violations of policies and procedures”: misusing City time and resources, driving around the City instead of reporting to or remaining at his assigned work area, arriving late to an assigned work area, and not accounting for his time during these absences from work. Grievant also received a one-day suspension in Summer 2019 for excessive absenteeism and sick-leave abuse.

On May 13, 2021, Jimenez conducted a Weingarten interview of Grievant, with Union Shop Steward Daniel Ferrick present. According to Jimenez, Grievant acknowledged at the interview that employees may not leave their assigned work areas without first notifying a supervisor. Jimenez testified that, in response to being presented at the interview with the list of GPS locations, Grievant said he did not recall why he was at the Ocean, Excelsior or Naples locations but there was a good burrito place—Don Chuy’s—near the latter two; and that Grievant also stated something to the effect of “if Reed . . . gave him enough work, then . . . [Grievant] wouldn’t be going around the city,” denied taking sod or dropping it off on Naples, and asserted that “Reed . . . told staff that they could take [sod] for their personal use.”

Jimenez continued his investigation by interviewing five other employees on Reed’s crew. His investigative report states that one interviewee—Angel Gonzales—contradicted Grievant’s assertion, stating that “Reed did not tell staff that they can take the sod”; that Gonzales and three other interviewees stated they did not hear Reed tell staff that they could take sod but did hear Reed tell the crew to take the sod to the dump at some point in time; and that one

interviewee—Jerry Gaines—stated “[h]e heard Reed tell the staff to take the sod if they want because the sod was going bad.” None of the interviewees had seen anyone take sod. Reed testified that he absolutely did not tell anyone they could take sod for their personal use.

Jimenez’s investigative report does not identify whether any of the interviewees stated *when* Reed made any of statements about sod. Reed testified that the sod did not go bad until about mid-December 2020, when it dried out, turned yellow, and had an odor because there was no irrigation at Sloat and Sunset. Jimenez’s report provides that interviewees Leandra Butler and Kristopher Fincher likewise stated the sod was “going brown.” According to Reed, he told Gonzales and Phil Roberts to take the dried-out sod to the dump in mid-December.

Jimenez testified that he concluded Grievant was dishonest during the Weingarten interview, had misused City time and resources, and had violated vehicle-use and attendance policies; that Grievant’s denial that he dropped off sod on Naples was not credible given the GPS report’s confirmation of the Whistleblower Complaint; and that Grievant’s stories about Don Chuy’s and Reed telling employees they could take sod were not believable.

Jimenez’s investigative report, dated July 26, 2021, recommended discharge.⁶ DPW adopted that recommendation in its Notice of Proposed Dismissal (NPD) dated July 29, 2021.

According to the Skelly decision dated October 22, 2021, a Skelly meeting was scheduled

⁶ In summarizing the GPS report, the investigation report recites the GPS location where Truck 450-608 was on Sloat Blvd. as having been at “Sloat Blvd. at Sunset Avenue” for fourteen minutes. No testimonial or documentary evidence clarified whether the City used reliable means to determine the Sloat location was at the Sunset cross street (as discussed above, the GPS report states only that the vehicle was on Sloat). Future management decisionmakers relied on the investigative summary of the GPS report. The Union does not challenge the City’s conclusion that the Sloat address in the GPS report is the intersection of Sloat and Sunset; on the contrary, it argues that, other than the 300 block of Naples, Truck 450-608 went only to DPW work locations on December 1, 2020. Other than Sloat and Sunset, no other Sloat DPW location is in the record.

for August 19, 2021. Jimenez testified that Grievant did not attend; that a Union representative attended in his stead; and that the Union representative said the meeting could not be continued and instead Grievant would provide a written Skelly response by September 7, 2021.

Grievant's email dated September 7, 2021 asserts that the City's investigative results were "inconclusive" because Grievant "is not in any of the pictures presented, nor was any City of San Francisco vehicle[]"; that the Skelly packet contained an incorrect delivery date of July 29, 2021 and Grievant actually received the packet on August 16, 2021; that the Whistleblower could not see the last three numbers of the truck on Naples; that the "picture log . . . states Driver as name 'unassigned'"; that there is a "total Discrepancy" because "in the picture the time frame is 11:50am-12:12pm at the suspected location" whereas the City's evidence show a "time frame of 12:12pm-12:28pm at the suspected location"; that Reed's statement that "this incident happened after the COVID-19 pandemic outbreak" was false because "the project at Balceta Ave. actually happened prior to the Covid-19 pandemic outbreak"; that the City "falsified these documents"; and that California "Penal Code 115 PC . . . makes it a crime for a person to knowingly file, register, or record a false or forged document" and a "violation of this section is a felony offense." To his September 7, 2021 email, Grievant attached a letter from him to Jimenez "notif[ying]" Jimenez to "CEASE AND DESIST any and all further unlawful acts of harassment, . . . spying . . . causing distress . . . and/or[] . . . calling with intent to harass," and informing Jimenez that he would contact law enforcement and pursue other legal and equitable remedies if Jimenez failed to comply with the cease-and-desist demand. Grievant's Skelly-response email also attached an October 18, 2017 letter from the Department of Fair

Employment and Housing (“DFEH”) to him requesting he approve and sign an accompanying complaint and return it to DFEH before it could be investigated by the agency.

The City’s Skelly decision, dated October 22, 2021, upheld all charges and recommended discharge. The City issued a Notice of Dismissal from Employment (NDE) dated October 29, 2021, listing the following grounds for discharge: (1) Dishonesty; (2) Misuse of City Time and Resources; (3) Violation of DPW Policy and Procedures (Leaving Assigned Work Area); (4) Violation of the City’s City Vehicles Policy, Citywide Vehicle Use Policy, and DPW’s City Vehicle Use Policy; and (5) Violation of the City’s Attendance and Punctuality Policy.

Then-Superintendent of the Bureau of Urban Forestry, Carla Short, testified that she issued the NDE; that she did not rely on the Whistleblower Complaint alone because sometimes Whistleblower allegations are baseless; and that she based the NDE on the investigatory findings, consultation with colleagues, and progressive discipline issued in prior suspensions on similar charges. The Union filed the grievance at issue here (“Grievance”), challenging the discharge.

EMPLOYER POSITION

The Grievance should be denied. The Employer had just cause for discharge. Grievant committed the charged misconduct, violating multiple City and DPW policies. He was dishonest, misused City time and resources, left his assigned work area, improperly used a City vehicle, and violated the attendance policy.

The appropriate quantum of proof is preponderance of the evidence. The clear-and-convincing quantum applies only where alleged conduct is criminal or stigmatizing—i.e., if the employee’s conduct constituted criminal behavior, moral turpitude, or social stigma. Grievant’s dishonesty, while serious, was not criminal. And Grievant’s charged misconduct, though

reprehensible, did not involve instances of moral turpitude or social stigma such as theft or fraud. Further, dishonesty is only one of many counts that together and independently warrant dismissal—especially given this was Grievant’s third offense for similar misconduct. In any event, the City’s evidence satisfies the “clear and convincing” quantum of proof.

Grievant drove Truck 450-608 on December 1, 2020. Reed’s testimony and the Key Watcher report show he was assigned the vehicle. Though Grievant repeatedly testified that he does not remember if he had the vehicle that day, Reed assigned him Truck 450-608 and left the car keys on the vehicle dashboard per his usual practice. There were no other absent employees that morning for whom Reed had to leave unclaimed keys.

From the Weingarten interview to his Skelly written statement to arbitration, Grievant never denied having Truck 450-608. Reed testified that, due to COVID, employees did not trade vehicles. Craven confirmed that Grievant was at the Junipero Serra worksite that day for two hours, and GPS data shows Truck 450-608 was also there for two hours: from 8:25am to 10:26am. It is undisputed Grievant returned Truck 450-608’s keys to Key Watch that day.

Grievant was dishonest. Neutral employees contradicted him. He lied about the condition of the sod on December 1, 2020; he lied about his whereabouts; and he falsely denied taking sod to 370 Naples. The GPS report places Grievant’s vehicle at 370 Naples Street from 12:12 to 12:23pm. The Whistleblower Complaint cites 12:15pm as the time of the sod delivery. The GPS report further shows that, before he stopped at Naples, Grievant stopped at Sloat and Sunset, where sod was stored and he had no work reason to be (and had no restroom key).

Grievant’s denial that he took the sod was not credible in part because he accompanied that denial with a statement that Reed told employees to take the sod as it was going bad. Four of

five interviewed employees contradicted Grievant's assertion; and the record shows the sod did not go bad until mid-December, well after the Whistleblower Complaint. The claim the sod was going bad was a red herring Grievant used to try and confuse the investigation.

The Union's argument that the Whistleblower Complaint is inadmissible hearsay is meritless. The document is a business record because it was provided to DPW by the Whistleblower Program. The contents of the Complaint were corroborated by Grievant's Peoplesoft description and the GPS report. Hearsay evidence is admissible when corroborated by other independently admissible evidence.

Grievant's testimony generally lacked credibility because it was evasive, deflective, and exaggerated. He claimed, for example, that he did not know his shift started at 5:00am on December 1, 2020 because his start time fluctuated. During his Skelly hearing, he likewise said he thought his shift started at 7:00am. But his text messages with Reed show he knew he was late as of 6:15am. His testimony that he did not know was dishonest.

Grievant similarly showed lack of credibility when he testified that Truck 450-608 is only used for crew-transport and exaggerated the time it would take a person to unload wet sod. The truck bed is large enough to carry sod. The sod was going bad as of December 1 because it was *not* being watered. Reed testified credibly regarding the weight of a sod roll. His estimates are consistent with the GPS record, which shows Grievant was on Naples for eleven minutes.

Grievant falsely denied association with 370 Naples, as shown by the CLEAR Report. It cannot reasonably be mere coincidence or database error that the address where the Complaint says someone matching Grievant's description was dropping off sod on December 1, 2020—a date Grievant's crew had access to sod—also appears in the CLEAR Report.

Grievant misused City time and other resources. Even if the arbitrator disregards the Complaint, the investigation led to discovery of egregious policy violations. Grievant used Truck 450-608 to travel to non-work locations for non-City purposes. The GPS report places Truck 450-608 at Lakeshore Plaza—not a City worksite—between 7:51am and 8:14am. Then, after two hours of work at Junipero Serra, Grievant was at the Balceta worksite to which he was not assigned and at which he had no business. The same is true of the shack on Sloat and Sunset. And then the GPS records show Grievant was at two non-work locations—377 Naples Street and 601 Excelsior Avenue—for the next seventeen minutes.

Unrefuted evidence shows Grievant was late and started driving Truck 450-608 at 7:06am. Grievant implied he was on a break at the locations where he had no City business; but, even if so, that would have meant he went on a break less than one hour after he started his shift. According to Grievant, he and his coworkers usually did not start to work until 9am, so they would take a four-hour break between their 5am start time and 9am and use the Lakeshore Plaza bathroom during that time.

Grievant violated policy by failing to be at his assigned work area. Grievant admitted he knew the policy against leaving an assigned work area and that he was required to alert a supervisor if leaving it. But he was assigned to the Junipero Serra tree-planting project, was there for only two hours (8:25am to 10:26am), and then—though he did not contact Reed, his supervisor, to state he was taking a break or seek permission to leave—left his assigned work area. Grievant has never denied being away from his assigned work area on December 1, 2020.

Grievant also violated policies regarding use of City vehicles. He used Truck 450-608 at non-work locations, including Lakeshore Plaza, Naples, and Excelsior; and at City locations

where he had no City business, including Laguna Honda and Sloat. Even if he were on acceptable breaks, this would have been a violation of vehicle-use policies.

Finally, Grievant admits having violated the City's Attendance and Punctuality Policy. He arrived two hours late for work on December 1, 2020. That is by itself a violation of the policy. The policy also requires that a time record accurately reflect the number of hours worked in a day, but Grievant's time record did not reflect the time he actually worked. The Union's argument that Reed entered Grievant's time sheet does not correct this deficiency because the Union cannot seriously contend Grievant would have entered only the two hours he actually worked that day. Reed confirmed with supervisor Craven that Grievant had performed his scope of work for that day, but could not have known that Grievant drove the City vehicle to different locations for non-work purposes for the remainder of the workday.

The Union's claim that too much time passed between the Whistleblower Complaint and the Weingarten interview lacks merit because the City conducted a full, fair investigation and Grievant was not prejudiced by its duration. The record shows the investigation was timely given all of the records and interviews considered. After a preliminary investigation, then Whistleblower Program had a back-and-forth with DPW while the City gathered complete information. The City Administrator's Office took over the investigation in February 2021, at which point Jimenez reviewed reports and interviewed Reed before scheduling the Weingarten.

Grievant had a full opportunity to mount a reasonable defense. He failed to do so. In his Weingarten, he had no explanation for any of his proven conduct. He only deflected that Reed had told employees they could take sod and claimed many City workers frequent Don Chuy's burrito shop. He never once claimed he lacked possession of Truck 450-608's keys and never

denied being at non-work locations or being at locations to which he was not assigned. Grievant then failed to appear at his Skelly hearing. His written statement did not respond to the substance of where he was on December 1, 2020. It only attacked the City's reliable proof and witnesses, including by arguing that the Balceta project happened before COVID-19 (an argument he now abandons). The relevance of Grievant's "Cease and Desist" and DFEH letters is unclear.

There is no evidence Grievant was prejudiced by any delay. He claims he does not recall whether he had Truck 450-608 or was at any of the GPS-report locations, but quotes what Reed supposedly said about getting rid of sod. He had a fair opportunity to gather and present related evidence—text messages, phone-call logs, or receipts available at the time. He showed nothing.

If the Arbitrator chooses to reduce the discipline, demotion is not a remedial option. The Civil Service Commission Rules do not permit appointment to a position without the Civil Service Commission process. Charter Section A8.409.3 states that "those matters within the jurisdiction of the civil service commission which establish, implement and regulate the civil service merit system shall not be subject to bargaining under this part . . . [including] the establishment of standards, procedures and qualifications for employment, recruitment, application, examination, selection, certification and appointment." The MOU states: "As required by Charter Section A8.409-3, the Civil Service Commission retains sole authority to interpret and to administer all Civil Service Rules." Civil Service Commission Rule 114.25 explicitly states the process by which permanent employees are appointed: "All permanent employees of the City and County shall be appointed through the civil service process by competitive examination unless exempted from the civil service examination and selection process in accordance with Charter provisions." Under the Civil Service Commission Rules,

employees must go through the civil-service process to obtain appointment. Thus, an arbitrator lacks the authority to reduce discharge to disciplinary demotion because the employee was not appointed to the position through the civil service process.

Discharge is the only appropriate penalty here. The Union's belated suggestion that Grievant did not have keys to Truck 450-608 on December 1, 2020 only undercuts his credibility because he never disputed having them prior to the hearing. The GPS report shows Grievant's assigned vehicle first traveled to the Sloat and Sunset location where sod was stored and then to the Complaint location on Naples. When Jimenez asked Grievant about sod, Grievant claimed Reed told employees to take it. The evidence also proves Grievant was away from his assigned work location, was late for work, did not ensure his timecard reflected hours worked, used a City vehicle for non-work purposes, and misused City time and resources.

Grievant was justly dismissed for numerous policy violations. Any of the offenses would be sufficient alone to warrant termination. With his prior discipline, discharge must be upheld.

UNION POSITION

The Grievance should be sustained. There was no just cause for discharge. The City bears the burden of proof by clear-and-convincing evidence because of the dishonesty charge. A termination on this basis affects Grievant's livelihood and ability to get another job. The City failed to carry its burden. It did not establish substantial evidence that Grievant was guilty, and the degree of discipline was not reasonably related to the seriousness of proven conduct.

The City terminated Grievant primarily for dishonesty even though there is no substantial evidence of it. It based dismissal almost entirely on an anonymous Whistleblower Complaint, but that Complaint should not even have been admitted into evidence because it is anonymous and

the Union did not get the opportunity to cross-examine the complainant. Contrary to the City's assertions, the Complaint does not clearly identify Grievant. It identifies only a Hispanic with a shaved head. Further, the complaint describes a vehicle number that starts with 450, but the Whistleblower admitted they could not see the remaining numbers, which they thought were 681. Grievant returned Truck Number 450-608. No witness even knows who identified Grievant.

Grievant testified that he never lived at 370 Naples; that he does not know who lives there; and that he did not take the sod. None of the witnesses interviewed by Jimenez said they saw anyone take sod. The City did not even review any accounting to see if sod was missing.

Jimenez did not investigate whether it is even possible for one person to unload, move, and carry twenty rolls of sod weighing approximately fifty to sixty pounds each from a truck to a residence in just eleven minutes—the time the City alleges a truck assigned to Grievant was parked on the 300 block of Naples. Even taking Reed's conservative estimate that it would take ten to fifteen minutes to unload ten rolls of sod, it would still have taken much longer than eleven minutes to not just unload but also move the twenty rolls from the truck to the residence.

Jimenez also failed to interview a key witness who could have confirmed Grievant's whereabouts and work completion: "Ms. Kramer,"⁷ who supervised Grievant's work planting trees on the day the sod was allegedly taken.

Worse, Jimenez interviewed Grievant six months after the incident. Grievant denied four times that he ever took sod. It was only after incessant questioning that Grievant mentioned Reed had said he wanted to get rid of the sod. Grievant mentioned this only to be helpful.

The City has not presented any evidence that Grievant was dishonest. Therefore,

⁷ It appears the Union may have meant to refer to Craven, not "Kramer."

dishonesty was not a valid basis for discharge. And the City also has not proven by substantial evidence that Grievant's discharge was justified by any policy violation. Reed admits Grievant completed his assigned work and was not given more work to fill the rest of his shift; and Grievant testified each of the locations tracked on the truck he allegedly drove were job sites, sites where tools were kept, or sites where bathrooms were available. While Grievant does not recall what he did that day, he believes he likely would have driven to other job sites to look for more work. This is corroborated by Reed: after completing assignments, Grievant stopped only once at any non-DPW work area—presumably to get a burrito on his way back to the yard.

The City's claim Grievant violated vehicle-use policies fails because there is no showing Grievant was assigned to a specific truck. Grievant testified he did not normally have an assigned truck and often shared with others. There is no showing he remained in the same truck all day. Even if he was in the same truck, all but one of the locations it went to were work locations.

The City's claim Grievant violated its attendance policy is also unfounded. As Grievant testified, Reed would often switch up his schedule at the last minute and he arrived two hours late on December 1, 2020 because of confusion. Grievant never lied about his time or punctuality.

There are mitigating circumstances. Grievant has worked for the City for fourteen years—since 2008—and has been a permanent employee of DPW since 2013. He has served as an acting supervisor and a team captain. He has also led summer youth programs. None of the alleged policy violations are a valid basis for termination after over nine years of DPW employment. Discharge also was inappropriate due to lack of supervision and mismanagement. Finally, Grievant's disciplinary history consists of only one unrelated 10-day suspension.

The Union seeks full reinstatement and a make-whole remedy. As to the City's argument the Arbitrator may not reduce discipline to demotion, the Union does not seek such a reduction. The MOU does, however, give the Arbitrator authority to reduce discipline to demotion. Article 32 reads: "The arbitrator shall have no authority to add to, subtract from, modify, or amend the terms of this agreement. The decision of the arbitrator shall be final and binding on all parties."

Further, under MOU ¶ 379, arbitration is an improper forum for the City's argument:

As required by Charter Section A8.409-3, the Civil Service Commission retains sole authority to interpret and administer all Civil Service Rules. Disputes between the parties regarding whether a Civil Service Rule or a component thereof is excluded from arbitration shall be submitted initially for resolution to the Civil Service Commission. All such disputes shall not be subject to the grievance procedure and arbitration process of the agreement. After such Civil Service Rules and Administrative Code sections are appended by reference to this agreement, alleged violations of the appended provisions will be subject to the grievance and arbitration procedure of this agreement.

Therefore, Civil Service Rule 114 ("Appointments") is irrelevant. That Rule is not appended to the MOU. Other Civil Service Rules are incorporated throughout the MOU, making clear that if the parties intended Rule 114 be incorporated, they would have incorporated it.

Lastly, MOU ¶ 24 specifically defines a disciplinary action with respect to the grievance process and Arbitrator's role: "Grievances regarding disciplinary actions shall be initiated at Step 2 of the Grievance Procedure within fifteen (15) days of the mailing date of the final written notice imposing discipline. . . . As used herein, 'disciplinary action' shall be defined as discharge, suspensions and disciplinary demotion." Thereby, the parties have explicitly agreed demotion is a valid disciplinary action. They would not have done so if they had not intended for demotion to be an option for the Arbitrator to impose.

The City has not met its burden. It should be ordered to reinstate Grievant to his position

without loss of seniority and make him whole plus interest. The Grievance should be sustained.

DISCUSSION

The City bears the burden of establishing just cause for discharge. Just cause generally requires persuasive proof both that a grievant violated a charged work rule and that the level of discipline imposed was appropriate for proven misconduct. Discipline need not always proceed in order from reprimands to suspensions to discharge, but just cause favors progressive discipline: disciplinary notice and a chance to correct deficient behavior before imposition of more serious discipline. But each case turns on its own discreet facts and circumstances, and disciplinary steps may be omitted where gross misconduct warrants summary discharge.⁸

The gravamina of the City's case allege Grievant was dishonest and misused City time and resources. Some general principles inform the fact-specific analysis these charges require.

First, dishonesty is a serious violation generally warranting summary termination without progressive discipline. With or without notice through express work rule, and with very narrow exceptions such as the right against self-incrimination, public-sector employees owe their employers honesty about the workplace. Dishonesty is not, however, lightly proven. The City has the heavy burden to show Grievant made a *willful* misstatement or omission of material fact.

Second, misuses of employer time or resources can likewise constitute serious offenses warranting summary discharge, particularly where an employee acts intentionally to obfuscate misconduct, has received past discipline about similar violations, or the incident involves related

⁸ The parties dispute the quantum of proof applicable to the City's allegations. This need not be resolved because the result in this matter would be the same under either the preponderance-of-the-evidence or clear-and-convincing-evidence standard.

misconduct the cumulative effect of which serves as an aggravating factor.⁹ For negligently extending breaks, falling asleep accidentally, or taking employer property the employee mistakenly thought was for employee consumption, on the other hand, Arbitrators seldom uphold discharge for work-time misuse in the absence of previous similar discipline.

Grievant had notice, on this record, that misuse of work time and other resources would not be tolerated. The City's Policy Regarding Use of City And County Property for Business Purposes Only ("Misuse Policy") provides that "[u]se of City resources for personal, political, employee organization or other non-City business is strictly prohibited" and defines "resources" to include "equipment," "supplies," and "any time for which you are receiving compensation from the City." The Union does not argue that this policy is unreasonable or that Grievant lacked notice of it. In 2020, Grievant also received disciplinary notice related to misuse of work time: a ten-day suspension showing that failure to be at his assigned work locations and failure to account for his time would constitute serious misconduct subject to heightened, grievable discipline.

The City has met its burden to establish generally how Grievant used his work time on December 1, 2020. The evidence shows Grievant arrived to work around two hours late and then drove Truck 450-608 to the locations in the City's GPS report. Grievant admitted in his 6:15am text message to Reed that morning he was arriving late, payroll records show he was charged with two hours of AWOL, and there is no evidence the Union or Grievant challenged that AWOL.

Uncontested Key Watch records show Reed checked out the keys to Truck 450-608

⁹ Employers often refer to misuse of work time as "theft of time" and personal use of employer property as "misappropriation." The City disavows these conversion-based constructions here, asserting that the Arbitrator should not require it to muster a clear-and-convincing quantum of proof in part because Grievant's "charged misconduct, though reprehensible, did not involve instances of moral turpitude or social stigma such as theft."

before Grievant arrived at work. Reed credibly testified that he left those keys on the vehicle's dashboard; business records demonstrate Grievant was assigned to the Junipero Serra project; Truck 450-608 is shown in the GPS report as having been near the Junipero Serra project for two hours; Craven reported to investigators that Grievant worked two hours on the Junipero Serra project;¹⁰ and—most importantly—Grievant returned Truck 450-608's keys at the end of the work day. Grievant testified that he did not like to drive Truck 450-608 and is not sure whether he *ever* did so; but Grievant's lack of recollection of ever driving the vehicle, given he plainly drove Truck 450-608 (at least to Key Watch at the end of the day), lacks credibility and does little to counterweigh Reed's testimony and Key Watch records showing Grievant was assigned to the vehicle in the usual, recognized manner and drove it that day.

The GPS report shows Grievant drove to Lakeshore Plaza after arriving at work around 7:00am and stayed there for about twenty-three minutes. Then, after driving to the Junipero Serra project and working for sixty-one minutes, he spent about twenty-one minutes at two locations on Sloat within one minute's drive of each other. Finally, he spent about nineteen minutes on the 300 block of Naples Street between 377 Naples and 601 Excelsior.

It is undisputed Grievant had no City business to conduct at any of the GPS report locations. The weight of evidence therefore shows Grievant spent all but two hours of his December 1, 2020 shift away from assigned work areas. Though Grievant admits he knew he was required to notify Reed if he left assigned locations, he failed to do so. Grievant used his December 1, 2020 shift and drove Truck 450-608 that day for personal endeavors—not for work.

Much of Grievant's testimony appeared manufactured to combat the charges against him

¹⁰ Craven's hearsay statement receives little weight because she did not testify at arbitration, but is noted insofar as it corroborates other evidence.

and lacked credibility. It was evasive and obfuscating. Most glaringly, Grievant falsely testified that he has never used the 370 Naples Street address for any purpose. The CLEAR Report produced in rebuttal impeached that testimony, showing Grievant had used the address in November 2018. It also showed that three individuals Grievant had testified he did not know were also using the address in November 2018. Grievant did not take the stand in surrebuttal to correct his testimony or explain how the CLEAR Report might have refreshed his recollection.

Grievant's testimony and communications during the investigation and grievance process were tendentious, evasive, and obfuscating in other ways as well. For example, Grievant testified that he did not like driving Truck 450-608, that he is not sure he ever drove Truck 450-608, and that Truck 450-608 is not used to transport materials like sod. This testimony, aside from failing to counterweigh undisputed Key Watch records showing Grievant returned Truck 450-608's keys on December 1, 2020, ironically strengthened the City's proof that he drove the Truck 450-608 on that date: If Grievant almost never drove it and hated driving it, and therefore December 1, 2020 was one very rare occasion when he was ever forced to drive it, it strains credulity to imagine he would be unable to remember that unique experience. And it is unclear why Grievant would testify Truck 450-608 is ordinarily used on the job only for crew-transport if not to divert attention from the fact that it has a truck bed that can carry supplies. Such tendentious testimony raised an inference that Grievant was hiding something.

Many of Grievant's attempted justifications suggested a guilty conscience, a failure to be forthcoming, and an inability to take responsibility for his own behavior. Most notably, Grievant testified both that he never took sod and that Reed permitted employees to take sod. Someone who had not taken sod would have little reason to offer justifications for taking it. On this record,

the Arbitrator is not persuaded that Grievant was “trying to be helpful” to investigators.

Grievant also blamed Reed in an attempt to justify his admittedly frequent attendance issues, including his lateness to work on December 1, 2020. And Grievant blame-shifted during the grievance process, casting aspersions on Jimenez and the procedural process in his written Skelly response. Grievant’s blame-shifting was relevant only in demonstrating his attempt to evade investigatory focus on his actions while on the clock December 1, 2020 and avoid taking accountability by refocusing blame on someone other than himself.

The Union raises valid points regarding investigative delay. Five-and-a-half months may in some cases be long enough to compromise an employee’s ability to respond to charges at a Weingarten interview, particularly where management’s basis for investigation is an anonymous written complaint with limited details. Investigations should be prompt because memories fade, managers and coworkers retire, witnesses move, and records are misplaced and deleted in the normal course. While the City might have had good reason for this delay given the difficulty of managing the workforce during COVID-19 pandemic, record evidence is thin regarding how such difficulty may have particularly affected the investigation process here.

The Union’s unfair-investigation argument is, however, undermined by Grievant’s own conduct. It is axiomatic that a party cannot create its own prejudice. The Union claims prejudice primarily in the form of Grievant’s ostensibly missing memories. But Grievant’s conduct renders the existence and scope of such prejudice impossible to determine: Grievant’s evasiveness and withholding of information throughout the investigation, grievance, and arbitral process prevent reliable distinguishment of which memories he truly lacks and which he has chosen to withhold.

Most centrally, Grievant consistently has withheld information about his connection to

370 Naples, an address he used in November 2018. The Whistleblower Complaint’s suggestion that Grievant left something in front of the precise address he used for his own financial purposes just two years earlier—and during the short window of time his truck was tracked outside of that same address—is too idiosyncratic to be mere coincidence. Grievant’s failure to be forthcoming, especially on this issue, has compromised the Union’s ability to establish that any prejudice was due to delay rather than to Grievant’s own nondisclosure.

On this record, the City had just cause to discipline Grievant for misusing work time and misusing a City vehicle on December 1, 2020. The City also had just cause to discipline Grievant for dishonesty regarding his willful omissions about the 370 Naples address. Grievant spent most of his workday driving Truck 405-608 to locations where he had no City business, failed to notify his supervisor of where he was is enough to prove this violation, and withheld crucial information during the investigation and at arbitration.

Level of Discipline

Grievant’s misuse of work time and willful omission of material facts each constitute gross misconduct subject to serious discipline up to and including termination. Though Grievant’s decade-long tenure and active involvement with the City and community cannot be ignored, one aggravating factor would make reinstatement inappropriate here even if Grievant’s record did not include a ten-day suspension for being unable to account for significant time away from his assigned work area: Grievant has failed to acknowledge, let alone take responsibility for, his actions. Had he done so, such remorse and accountability still may have been insufficient to show his behavior could be corrected with disciplinary notice. But here, where Grievant has sought to hide his conduct by shifting blame, falsely pleading ignorance, and refusing to admit

any part of his misconduct, neither the City nor the public can be expected to trust him moving forward. His continued employment would harm the public service.

Under these circumstances, the City had just cause to discharge Grievant for misuse of time and dishonesty. Given this finding, it is unnecessary to determine whether Grievant took City sod or violated the Attendance and Punctuality Policy.¹¹ His termination is upheld.

AWARD

The Grievance is denied. The City had just cause to discharge Grievant.

Date: April 10, 2023



Yuval Miller, Arbitrator

¹¹ It is, for the same reason, unnecessary to evaluate whether or how Charter Section A8.409-3's provision that the Civil Service Commission's "appointment" power "shall not be subject to bargaining" affects an arbitrator's remedial authority, or whether or how MOU ¶ 379 affects the Arbitrator's authority to interpret Civil Service Rules regarding "appointment."



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Sent via Email

NOTICE OF RECEIPT OF APPEAL

DATE: November 23, 2021
REGISTER NO.: 0194-21-7
APPELLANT: JOSE SANTIAGO

Carol Isen
Human Resources Director
Department of Human Resources
1 South Van Ness Avenue, 4th Floor
San Francisco, CA 94103

Dear Carol Isen:

The Civil Service Commission has received the attached letter from Jose Santiago, requesting a hearing on his future employability with the Department of Public Works. Your review and action are required.

If this matter is not timely or appropriate, please submit CSC Form 13 "Action Request on Pending Appeal/Request," with supporting information and documentation to my attention by email at civilservice@sfgov.org. CSC Form 13 is available on the Civil Service Commission's website at www.sfgov.org/CivilService under "Forms."

In the event that Jose Santiago's appeal is timely and appropriate, the department is required to submit a staff report in response to the appeal within sixty (60) days so that the matter may be resolved in a timely manner. Accordingly, **the staff report is due no later than 11 a.m. on February 24, 2022**, so that it may be heard by the Civil Service Commission at its meeting on March 7, 2022. If you will be unable to transmit the staff report by the February 24th deadline, or if required departmental representatives will not be available to attend the March 7th meeting, please notify me by use of CSC Form 13 as soon as possible, with information regarding the reason for the postponement and a proposed alternate submission and/or hearing date.

Appellant: Jose Santiago
November 23, 2021
Page 2 of 2

You may contact me at Sandra.Eng@sfgov.org or (628) 652-1100 if you have any questions. For more information regarding staff report requirements, meeting procedures or future meeting dates, please visit the Commission's website at www.sfgov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Attachment

Cc: Jeanne Buick, Department of Human Resources
Kate Howard, Department of Human Resources
Mawuli Tugbenyoh, Department of Human Resources
Anna Biasbas, Department of Human Resources
Chanda Ikeda, Office of the City Administrator
Svetlana Vaksberg, Office of the City Administrator



CIVIL SERVICE COMMISSION CITY AND COUNTY OF SAN FRANCISCO

Sent via Email

November 23, 2021

Jose Santiago
[REDACTED]

Subject: Register No. 0194-21-7: Requesting a Hearing on his Future Employability with the City and County of San Francisco.

Dear Jose Santiago:

This is in response to your appeal submitted to the Civil Service Commission on November 18, 2021, requesting a hearing on your future employability with the City and County of San Francisco. Your appeal has been forwarded to the Department of Human Resources for investigation and response to the Civil Service Commission.

If your appeal is timely and appropriate, the department will submit its staff report on this matter to the Civil Service Commission in the near future to request that it be scheduled for hearing. The Civil Service Commission generally meets on the 1st and 3rd Mondays of each month. You will receive notice of the meeting and the department's staff report on your appeal two Fridays before the hearing date via email, as you have requested on your appeal form.

The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability. However, the Commission CANNOT reverse the department's decision to terminate your employment. In the meantime, you may wish to compile any additional information you would like to submit to the Commission in support of your position. The deadline for receipt in the Commission office of any additional information you may wish to submit is 5:00 p.m. on the Tuesday preceding the meeting date by email to civilservice@sfgov.org. Please be sure to redact your submission for any confidential or sensitive information (e.g., home addresses, home or cellular phone numbers, social security numbers, dates of birth, etc.), as it will be considered a public document.

You may contact me by email at Sandra.Eng@sfgov.org or by phone at (628) 652-1100 if you have any questions. You may also access the Civil Service Commission's meeting calendar, and information regarding staff reports and meeting procedures, on the Commission's website at www.sfgov.org/CivilService.

Sincerely,

CIVIL SERVICE COMMISSION

/s/

SANDRA ENG
Executive Officer

Jose Santiago DSW [REDACTED]

[REDACTED]
Thu 11/18/2021 3:38 PM

To: CivilService, Civil (CSC) <civilservice@sfgov.org>

 14 attachments (19 MB)

Original Complaint.pdf; Right to sue .HEIC; DFEH 1.pdf; FMLA denied 2019.HEIC; FMLA denied 2020.HEIC; Dr. Signature on request .HEIC; Finally signed 2021.HEIC; Investigation 1.HEIC; Skelly notice .pdf; Sod Skelly report 1.pdf; Sod Skelly report 2.pdf; Dismissal letter.pdf; Right to sue copy.jpeg; Mr. Foster.png;

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

I'm asking for appeal/lift of restrictions according to the civil service voicemail, email is a valid response request for an appeal or request for restrictions lift.

Please find attached

In 2017 I took on a supervisor/lead position that I tested for. Immediately after taking on the position I started to notice sick hours disappear. 1-2 hours a pay period would somehow be missing. Right away I notified my manager at the time about the hours missing. I was told we would have a meeting about it and it never happened. Also, I began to notice a pattern of monitoring by two of the female supervisors. They began to GPS and monitor me while co workers of the same race/sex were not being watched in the same way or fashion. I was being held to a different standard. I also heard these same two female supervisors on several occasions make references saying that men shouldn't be supervisors because they don't won't no conflict. They would go on to complain about men in our department almost every morning. I would also watch them treat and go after white employees relentlessly. Hispanic and white employees were always held to a different standard and usually were expected to carry the workload. So in 2017 I filed a complaint with DFEH for discrimination. Within two or three weeks from filing this complaint I was placed on sick leave restrictions. I immediately asked for the dates and pulled my phone records. I turned them in to my super attendant because I had no call log records for quite a few of the dates. She told me she would have to pull sign in sheets and they only showed me proof for I believe about 6 sign in sheets. They told me they would have to find the rest and we will re meet. Well, that also never happened. I then ended up getting suspended for abuse of the sick call in system while being on sick leave restrictions. I immediately asked for the dates of this new accusation. They showed me a calendar of dates in which I had been on a medical approved leave for. You can see those dates in the attached documents. I couldn't believe it and was in aww. My super attendant also went on to say she never got my phone logs I emailed her. If you look at the very end of the investigation I attached you can see that she is lying because there is several emails from me and her about this matter. I was suspended and they still don't know I have all these conversations recorded. Even with this latest reason for dismissal they are lying in all of the paperwork. I also have the investigation recorded and they don't know. Their story has changed from the initial investigation meeting to what they have put in this paperwork. Like I said I have it all recorded on my phone. They said that this event happened during covid and that's a lie it happened way before covid they lied about me hoping a fence. I have witnesses in the investigation attached saying they

didn't see me take anything. I also noticed something else disturbing in one attachment. One of my suspensions it referred to me as Mr. Foster? How is that possible I'm not sure if that is a typo or if this is something someone has against me that's personal but I don't even think we have an employee with a last name or first name of Foster. Some of the things I endured were as follows:

- Passed up for overtime
- Only supervisor without a truck
- not included in weekly supervisors meetings
- suspended several times
- they removed my children from health benefits once
- denied FMLA after serious injury
- work tools stolen told if I locked up tools I would be suspended
- not given gear written in MOU
- demoted

The last 5 years of my employment with this department has been horrible it has really effected my life mentally, emotionally, and financially. I would never wish this type of treatment to anyone. My job has become a nightmare.

EEOC Form 161 (11/16)

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
DISMISSAL AND NOTICE OF RIGHTS

To: **Jose Santiago**
[Redacted]

From: **Los Angeles District Office**
255 E. Temple St. 4th Floor
Los Angeles, CA 90012

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

37A-2018-00256

Karrie L. Maeda,
State & Local Coordinator

(213) 894-1100

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:

- The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.
- Your allegations did not involve a disability as defined by the Americans With Disabilities Act.
- The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.
- Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge
- The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.
- The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.**
- Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, the Genetic Information Nondiscrimination Act, or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

Rosa M. Viramontes,
District Director

April 12, 2018

(Date Mailed)

Enclosures(s)

cc:

CITY AND COUNTY OF SAN FRANCISCO
2323 Cesar Chavez Street
San Francisco, CA 94124

Skelly Decision Re: Jose Santiago
Page 4 of 4

- July 17, 2017
- September 22, 2017
- October 20, 2017
- January 4, 2018
- January 12, 2018
- May 24, 2018
- June 14, 2018

The relevant time period from the Department's *Skelly* notice is July 16, 2018 to May 10, 2019. Since the disputed dates were over a year prior, the dates were not relevant to the hearing.

Mr. Santiago explained that he was absent from work because he felt work was a stressful environment and that he was dealing with his own personal health issues. However, Mr. Santiago failed to substantiate why his absences occurred adjacent to his weekends, vacations, or holidays. Mr. Santiago's excessive and pattern absences demonstrate that he continues to engage in sick leave abuse and is a violation of the City's Attendance and Punctuality Policy.

Therefore, all Charges are SUSTAINED.

RECOMMENDATION

After consideration of the information provided by the Department and Mr. Santiago, I uphold the Department's recommendation that Mr. Foster receive a one (1) day suspension.

EXHIBITS

1. July 3, 2019, Unapproved Leave and Notice to Return to Work
2. Copies of Text Messages from Mr. Santiago to Ms. Short





STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GOVERNOR EDMUND G. BROWN JR.

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
800-884-1684 | TDD 800-700-2320
www.dfeh.ca.gov | email: contact.center@dfeh.ca.gov

DIRECTOR KEVIN KISH

October 18, 2017

Jose Santiago
[REDACTED]

Via email: [REDACTED]

RE: Request to Approve Complaint

DFEH Matter Number: [REDACTED]

EEOC Number:

Santiago / City and County of San Francisco

Dear Jose Santiago:

This notice confirms that you have filed an inquiry and have been interviewed by a Department of Fair Employment and Housing representative. You must approve, sign and return the complaint before it can be investigated. If you do not approve the language on the complaint, please do not sign the complaint; instead, contact me to discuss your concerns. **If you do not return the signed complaint within 10 days, your inquiry will be closed and no further action will be taken.**

Please note that the information you provided is subjected to the Department's privacy policy and the California Public Records Act, Government Code section 6250 et seq.

Thank you for your cooperation.
Sincerely,

Jason Mendoza

Jason Mendoza
Staff Services Analyst
559-244-4761
jason.mendoza@dfeh.ca.gov

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

Complaint of
Jose Santiago, Complainant.

DFEH No. 931508-305447
EEOC No. 37A-2018-00256-C



vs.

City and County of San Francisco, Respondent.
2323 Cesar Chavez Street
San Francisco, CA 94124

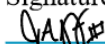
THE PARTICULARS ARE:

1. I, Jose Santiago, allege that I was subjected to Discrimination, Harassment by respondent, City and County of San Francisco due to one or more Fair Employment and Housing Act protected bases: Sex- Gender.
2. I was Demoted, Denied a work environment free of discrimination and/or retaliation, Denied promotion. The most recent harm occurred on or around July 27, 2017.
3. My belief is based on the following: From September 2016 to May 2017, I was subjected to discrimination, harassment, demoted, denied a work environment free of discrimination and/or retaliation, denied promotion, based on my sex (Male).

VERIFICATION

I, Jose Santiago, am the Complainant in the above complaint. I have read the above complaint and know its contents. I declare under penalty of perjury under the laws of the State of California that the above is true and correct of my own knowledge, except as to those matters alleged on information and belief, which I also believe to be true.

Signature of Complainant or Complainant's Legal Representative:


Jose A. Santiago III (Oct 19, 2017)

Date:

Oct 19, 2017



J. Santiago Complaint

Adobe Sign Document History

10/23/2017

Created:	10/18/2017
By:	Jason Mendoza (Jason.Mendoza@dfeh.ca.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAFIDXTJMqcozHGcjyj17TG2r76QuUCS94

"J. Santiago Complaint" History

-  Document created by Jason Mendoza (Jason.Mendoza@dfeh.ca.gov)
10/18/2017 - 8:59:35 AM PDT- IP address: 165.235.41.53
-  Document emailed to Jose A. Santiago III ([redacted]) for signature
10/18/2017 - 8:59:48 AM PDT
-  Document viewed by Jose A. Santiago III ([redacted])
10/18/2017 - 2:59:18 PM PDT- IP address: 66.87.118.160
-  Document e-signed by Jose A. Santiago III ([redacted])
Signature Date: 10/19/2017 - 12:00:16 PM PDT - Time Source: server- IP address: 66.87.118.160
-  Document emailed to Jason Mendoza (Jason.Mendoza@dfeh.ca.gov) for approval
10/19/2017 - 12:00:17 PM PDT
-  Document viewed by Jason Mendoza (Jason.Mendoza@dfeh.ca.gov)
10/19/2017 - 3:42:59 PM PDT- IP address: 165.235.41.53
-  Document approved by Jason Mendoza (Jason.Mendoza@dfeh.ca.gov)
Approval Date: 10/23/2017 - 11:40:09 AM PDT - Time Source: server- IP address: 165.235.41.50
-  Signed document emailed to Jose A. Santiago III ([redacted]) and Jason Mendoza (Jason.Mendoza@dfeh.ca.gov)
10/23/2017 - 11:40:09 AM PDT





CALIFORNIA DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING PRE-COMPLAINT INQUIRY EMPLOYMENT

The completion and submission of this Pre-Complaint Inquiry will initiate an intake interview with a Department of Fair Employment and Housing (DFEH) representative. The Pre-Complaint Inquiry is not a filed complaint. The DFEH representative will determine if a complaint can be accepted for investigation. Your submission of this document acknowledges that you have read and agree to the DFEH's Privacy Policy.

COMPLAINANT:

NAME:

Jose Santiago

TELEPHONE NUMBER:

[REDACTED]

ADDRESS:

[REDACTED]

EMAIL ADDRESS:

[REDACTED]

CITY/STATE/ZIP:

[REDACTED]

Do you need a translator during the complaint process? Yes No If yes, indicate language _____

RESPONDENT:

NAME:

City and County of San Francisco

TELEPHONE NUMBER:

415-695-2124

ADDRESS: 2323 Cesar Chavez St.

CITY/STATE/ZIP: San Francisco, CA 94124

NUMBER OF EMPLOYEES: > 100

TYPE OF EMPLOYER: Public Entity

ADD CO-RESPONDENT:

NAME/TITLE:

ADDRESS:

TELEPHONE NUMBER:

FIRST DATE OF HARM (Month/Day/Year): Approx. June, 2015

LAST DATE OF HARM (Month/Day/Year): July 27, 2017

1. I ALLEGE THAT I EXPERIENCED: Discrimination Harassment Retaliation

BECAUSE OF MY ACTUAL OR PERCEIVED:

- Age - 40 and over
- Ancestry
- Association with a member of a protected class
- Color
- Disability (physical or mental)
- Engagement in Protected Activity
- Family Care or Medical Leave
- Genetic Information (information about genetic tests or participation in clinical research or manifestation of disease)
- Marital Status
- Medical Condition - Including cancer or cancer related medical condition or genetic characteristics (a gene, chromosome or characteristic not presently associated with symptoms of disease)
- Military or Veteran Status
- National Origin - Including language use restrictions and use and possession of a driver's license issued to persons unable to prove their presence in the U. S. is authorized under federal law
- Race
- Religion - Includes religious dress and grooming practices
- Sex - Gender
- Sex - Gender identity or Gender expression
- Sex - Includes pregnancy, childbirth, breastfeeding and/or related medical conditions
- Sexual Orientation

AS A RESULT, I WAS:

- Asked impermissible non-job-related questions
- Demoted
- Denied a good faith interactive process
- Denied a work environment free of discrimination and/or retaliation
- Denied continuation of employer-paid health care coverage while on pregnancy disability leave
- Denied employment
- Denied equal pay
- Denied family care or medical leave
- Denied or forced to transfer
- Denied pregnancy leave
- Denied promotion
- Denied reasonable accommodation
- Denied reinstatement
- Denied the right to wear pants
- Forced to quit
- Laid-off
- Terminated
- Tested for genetic characteristics
- Other (specify) _____

2. Do you have an attorney who agreed to represent you in this matter? Yes No

If yes, please provide the attorney's contact information.

COMPLAINANT'S REPRESENTATIVE INFORMATION

Attorney Name: _____

Attorney Firm Name: _____

Attorney Address: _____

Attorney City, State, and Zip: _____

3. Briefly describe what you believe to be the reason(s) for the discrimination, harassment or retaliation. (Optional)

I was employed as a Laborer and then Gardener at City of County of S.F.

since approximately 2008.

I was promoted to a Lead "Captain" position in approx. 2015.

I performed well in the Captain position but I was demoted in approx. Jan. 2017.

I was replaced by a female worker.

I was denied the opportunity to bid for subsequent promotions by my supervisor, Ms. DeShelia Mixon, a female supervisor.

Over the course of my nine years, I have witnessed male employee being passed over for promotion and job opportunities in favor of female workers, at the direction of Ms. Mixon.

I was demoted and denied the ability to compete for subsequent promotions because I am a man.

Multiple horizontal lines for additional text input.

DEMOGRAPHIC INFORMATION

THIS INFORMATION IS OPTIONAL AND IS ONLY USED FOR STATISTICAL PURPOSES.

Primary Language: English

Age: 37

GENDER:

- Male
 Female
 Other

MARITAL STATUS:

- Single
 Married
 Cohabitation
 Divorced

RACE:

- American Indian, Native American or Alaskan Native
 Asian
 Black or African American
 Native Hawaiian or Other Pacific Islander
 White
 Other

NATIONAL ORIGIN:

- Afghani National Origin
 American [U.S.A.] National
 Origin Asian Indian National
 Origin Bangladeshi National
 Origin Cambodian National
 Origin Canadian National
 Origin Chinese National
 Origin Cuban National Origin
 Dominican National Origin
 Egyptian National Origin
 English National Origin
 Ethiopian National Origin
 Fijian National Origin
 Filipino National Origin
 German National Origin
 Ghanaian National Origin
 Guamanian National Origin
 Haitian National Origin
 Hawaiian National Origin
 Hmong National Origin
 Indonesian National Origin
 Iranian National Origin
 Iraqi National Origin
 Irish National Origin
 Israeli National Origin

ETHNICITY:

- Hispanic or Latino
 Non-Hispanic or Latino
 Italian National Origin
 Jamaican National Origin Japanese
 National Origin
 Korean National Origin
 Laotian National Origin
 Lebanese National Origin Malaysian
 National Origin
 Mexican National Origin
 Nigerian National Origin
 Other National Origin
 Other African National Origin
 Other Asian National Origin
 Other Caribbean National Origin
 Other European National Origin
 Other Hispanic/Latino National
 Origin Other Middle Eastern National
 Origin Pakistani National Origin
 Puerto Rican National Origin
 Salvadoran National Origin Samoan
 National Origin
 Sri Lankan National Origin
 Syrian National Origin
 Taiwanese National Origin
 Thai National Origin
 Tongan National Origin Vietnamese
 National Origin

PCI-Employment

DEMOGRAPHIC INFORMATION

THIS INFORMATION IS OPTIONAL AND IS ONLY USED FOR STATISTICAL PURPOSES.

DISABILITY:

N/A

- AIDS or HIV
- Blood / Circulation
- Brain / Nerves / Muscles
- Digestive / Urinary / Reproduction
- Hearing
- Heart
- Limbs [Arms / Legs]
- Mental
- Sight
- Speech / Respiration
- Spinal / Back / Respiration
- Other Disability

RELIGION:

- | | |
|---|---|
| <input type="checkbox"/> Agnostic | <input type="checkbox"/> Nonreligious |
| <input type="checkbox"/> Atheist | <input type="checkbox"/> Protestantism |
| <input type="checkbox"/> Bahai | <input type="checkbox"/> Primal-indigenous |
| <input type="checkbox"/> Buddhism | <input type="checkbox"/> Quakers |
| <input checked="" type="checkbox"/> Catholicism | <input type="checkbox"/> Rastafarianism |
| <input type="checkbox"/> Christianity | <input type="checkbox"/> Spiritism |
| <input type="checkbox"/> Confucianism | <input type="checkbox"/> Shinto |
| <input type="checkbox"/> Hinduism | <input type="checkbox"/> Sikhism |
| <input type="checkbox"/> Islam | <input type="checkbox"/> Taoism |
| <input type="checkbox"/> Jehovah's Witness | <input type="checkbox"/> Unitarian-Universalism |
| <input type="checkbox"/> Judaism | <input type="checkbox"/> Zoroastrianism |
| <input type="checkbox"/> Neo-Paganism | <input type="checkbox"/> Other |



Alaric Degrafinried, Acting Director | Director's Office

alaric.degrafinried@sfdpw.org | T. 628.271.2677 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

Via Hand Delivery

July 29, 2021

Jose Santiago
[REDACTED]

Re: Notice of Proposed Dismissal from Employment with the City and County of San Francisco and *Skelly* Meeting

Dear Mr. Santiago:

This is to inform you that San Francisco Public Works (Department) is recommending to dismiss you from your position as a permanent civil service (PCS) 3417 Gardener. The Department has scheduled a *Skelly* meeting on **August 19, 2021 at 11:00 a.m. at 2323 Cesar Chavez Street, Building A, SSR Conference Room, San Francisco, CA 94124** to address the charges. The meeting will provide you the opportunity to respond to the charges and proposed dismissal of employment. You are entitled to representation and may bring a representative to the *Skelly* meeting.

Please note that due to the current pandemic, the *Skelly* meeting officer will be attending via videoconferencing. If you prefer to join the hearing via video conferencing, please inform Jason Jimenez, Senior Employee and Labor Relations Analyst, City Administrator Human Resources, at (415) 695-2033 or via email at Jason.Jimenez@sfgov.org by August 18, 2021 so he can email you a link to the meeting. You must download the Microsoft Teams video conferencing application to your phone or computer if you choose this option.

CHARGES

The charges that support the proposed discipline are as follows:

1. Dishonesty.
2. Misuse of City Time and Resources.
3. Violation of Department Policy and Procedures (Leaving Assigned Work Area).
4. Violation of City's City Vehicles Policy; Citywide Vehicle Use Policy; and Department's City Vehicle Use Policy.
5. Violation of City's Attendance and Punctuality Policy.

BACKGROUND

London N. Breed, Mayor | sfpublicworks.org | [@sfpublicworks](https://twitter.com/sfpublicworks)

Santiago
 Notice of Proposed Dismissal from Employment and Skelly Meeting
 Page 2 of 7

On August 31, 2013, the Department hired you to a 3417 Gardener, PCS position. You are assigned to Bureau of Urban Forestry (BUF). You perform maintenance and landscaping renovation tasks to care for the City's athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas.

A. Prior Discipline

In 2020, you received a 10-day suspension for misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area, failing to notify supervisor after completing work early; violation of the City's Attendance and Punctuality Policy; and dishonesty. These charges were based on your misconduct as follows: (1) On September 24, 2019, you and your co-worker failed to report to their assigned work location and spent 79 continuous minutes driving to Golden Gate Park, which is 3.8 miles away from the assigned work location; (2) On September 25, 2019, you and the same co-worker arrived late to the assigned work location and could not account for your time; and (3) on September 25, 2019, after completing your assignment, you and your co-worker drove around in the City vehicle for 96 continuous minutes; the vehicle was stopped ten miles away from the assigned work location.

Your dishonesty; misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area; and violation of City's Attendance and Punctuality Policy has continued.

B. December 1, 2020 Whistleblower Complaint

The Department received a Whistleblower Complaint from the City's Whistleblower Program that on December 1, 2021 at approximately 12:15 p.m., a Department employee (Hispanic with shaved head) dropped off 20 rolls of sod owned by the City to a private residence at 370 Naples Street driving a white twin cab pick-up vehicle 450-608. The Whistleblower program provided the GPS report for 450-608. GPS showed the vehicle stopped at the following locations:

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
Sloat Blvd at Sunset Avenue	14 minutes	11:29 a.m. to 11:50 a.m. (21 min)
377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

On February 25, 2021, City Administrator Human Resources (CAHR) was asked to further investigate the complaint.

RECORDS AND INFORMATION

In addition to the GPS records, the following records were reviewed:

Santiago
Notice of Proposed Dismissal from Employment and Skelly Meeting
Page 3 of 7

1. Keywatcher

The Department's Keywatcher report identifies the names of employees who take and return City vehicle keys and when the keys were taken. The December 1, 2020 Keywatcher report for City vehicle 450-608 identifies Douglas Reed, 3422 Park Section Supervisor and your supervisor as taking out the keys at 4:49 a.m. and you as returning the keys to the vehicle at 12:52 p.m. Due to COVID-19 safety protocols, the Department implemented safety procedures whereby supervisors check out keys on behalf of their employees to reduce the number of people gathering at the key watch system.

2. GPS Records

GPS records show that you drove City vehicle 450-608 to Sloat Blvd. and Sunset Avenue where the Department stored sod, where you remained for 21 minutes. Thereafter, you drove the City vehicle to 377 Naples Street where you remained for 11 minutes.

3. Payroll and Time Records

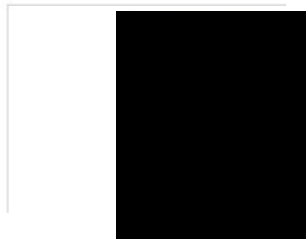
On December 1, 2020, you reported working 6 hours and was AWOL for 2 hours. Your work schedule was supposed to be at 5:00 a.m. through 1:30 p.m. but you actually started working at 7:06 a.m.

4. Cost of Sod

The City paid approximately \$4.25 per roll for the sod so 20 rolls of sod would cost approximately \$85.00.

5. Your Picture from the City's PeopleSoft Records

Jose A Santiago III



FINDINGS AND ANALYSIS

Attached to this notice as Exhibit 1 is a copy of the investigation report (Report) and exhibits. The Report details the evidence supporting the charges. Based on the pervasiveness, extent, and the gravity of your misconduct as discussed in the Report, the Department is recommending that you be dismissed from your employment with the Department and the City. The charges against you are as follows:

Santiago
Notice of Proposed Dismissal from Employment and Skelly Meeting
Page 4 of 7

Charge 1: Dishonest and Not Credible

You were found to be dishonest and not credible for the following reasons:

1. You denied that on December 1, 2020 at approximately 12:15 p.m., you dropped off 20 rolls of sod at 370 Naples Street in City vehicle 450-608. However, it is undisputed that you worked on December 1, 2020, was assigned to City vehicle 450-608, and that GPS records confirm that City vehicle 450-608 drove to Sloat and Sunset (where sod was stored), and then drove to 377 Naples Street. Moreover, the individual who made the complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify you as a Hispanic and you have a shaved head.
2. You alleged that Reed said the sod was going to go to waste and told staff to take the leftover sod if they wanted. All five witnesses interviewed from the crew said that they did not hear Reed tell staff that they can take the sod. Rather, they heard Reed tell Gonzales and Roberts to take the sod to the dump. Therefore, it is more likely than not that you were dishonest and Reed did not tell staff that they can take the sod.

Charge 2: Misuse of City Time and Resources

The City's Use of City and County Property for Business Purposes Only Policy contained in the City's Employee Handbook states in relevant part:

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited.

On December 1, 2020, you misused City resources when you took sod, which is City property, without approval, and dropped off 20 rolls of sod to a private residence at 370 Naples Street. GPS records confirm that you drove to the location where the Department's sod was stored and was there from 11:29 a.m. to 11:50 a.m. and then from there you drove to 370 Naples Street, where you remained from 12:12 p.m. to 12:23 p.m. Moreover, the Whistleblower complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify you as a Hispanic and you have a shaved head.

Additionally, on December 1, 2020, you reported late to work by 2 hours, you were supposed to start work at 5:00 a.m. but did not start officially working until you started driving City vehicle 450-608 at 7:06 a.m.

From 7:06 a.m. to 8:14 a.m., you misused City time and resources when you were not at your assigned work location and instead drove and parked at one non-work location at 4228 Ocean Avenue. Your work assignment was at Junipero Serra Boulevard at Ocean Avenue. GPS records show that you arrived at that work location at 8:25 a.m. and that the vehicle was parked there for 2 hours and 1 minute. Thereafter, you misused City time and resources again when you were not at your assigned work location and instead drove and parked at four more non-work locations.

Santiago
 Notice of Proposed Dismissal from Employment and Skelly Meeting
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Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
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377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

Since you were AWOL for two hours (from 5:00 a.m. to 7:00 a.m.) and was at your assigned work area (Junipero Serra Blvd) for only two hours, you misused four hours of City time that day.

Charge 3: Violation of Department Policy and Procedures (Leaving Assigned Work Area)

The March 16, 2016 Appropriate Use of City Vehicles policy memo from Larry Stringer, former Deputy Director for Operations states in relevant part:

All field employees are required to take coffee and lunch breaks within their assigned areas if you must leave your area for any reason, you must contact your supervisor for approval before hand. City vehicles must remain in their assigned districts.

As discussed above, on December 1, 2020, you drove to and parked your City vehicle at five different locations which were outside of your assigned work area that day.

You did not notify your supervisor that you would stop at those five locations that are not your assigned work areas. There was also no record of any service orders or special projects to be fulfilled at those locations that day, thus you were in violation of Department policy for leaving your work area without supervisor authorization.

Charge 4: Violation of City's City Vehicles Policy, the Citywide Vehicle Use Policy, and the Department's City Vehicle Use Policy.

The City's Vehicles Policy contained in the City's Employee Handbook states in relevant part:

Like all City resources, City vehicles are to be used for City business only. City vehicles may not be used for personal business. Employees who violate the Vehicle Code or any other applicable laws and City policies in City vehicles may be subject to disciplinary action, up to and including termination.

The Citywide Vehicle Use Policy states in relevant part:

Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of City business.

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Notice of Proposed Dismissal from Employment and Skelly Meeting
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The November 2, 2017 City Vehicle Use Policy memo from Larry Stringer, former Deputy Director for Operations (DDO) states in relevant part:

All City vehicles are for official City business use only. Employees may not use a City vehicle for personal errands.

On December 1, 2020, you violated the City's City Vehicles Policy contained in the City's Employee Handbook; the Citywide Vehicle Use Policy; and the DDO's City Vehicle Use Policy memo when you used a City vehicle and City resources for non-City business when you drove and parked your City vehicle at five non-work locations.

Charge 5: Violation of City's Attendance and Punctuality Policy

The City's Attendance and Punctuality Policy contained in the City's Employee Handbook states in relevant part:

Regular and prompt attendance is an essential requirement of your job. As a City employee, you are to report to your work station at your scheduled work time. Your time records must accurately reflect the time you start work and the number of hours worked in every work day.

On December 1, 2020, you were instructed to work at the Junipero Serra Boulevard Project where you worked from 8:25 a.m. to 10:26 a.m., for a total 2 hours. You left the Junipero Serra Boulevard Project at 10:26 a.m. and after did not perform any more work that day as you drove and parked the City vehicle at five non-work locations.

While you were paid for working 6 hours from 7:00 a.m. to 1:00 p.m., you did not work the entire 6 hours. You only spent a total of 2 hours at your assigned work area. You violated the City's Attendance and Punctuality policy when you did not accurately reflect the time you worked on December 1, 2020.

On November 21, 2014, you acknowledged you read and understood the City Employee Handbook.

You have a History and Pattern of Misusing City Resources, Being Dishonest and Violating City and Department Policies

On September 24 and 25, 2019, you engaged in similar misconduct as addressed in this investigation because you failed to report to the work sites on time and instead drove around the City in a City vehicle without performing any work; you reported working for more hours than you actually did. You were also found to be dishonest when questioned about your whereabouts and actions. Although you served a 10 day-suspension from June 3 to 16, 2020, six months later, you again engaged in the same misconduct when he took 20 rolls of sod and dropped it off at a private residence and then drove to various locations which were not your assigned work locations.

Santiago
Notice of Proposed Dismissal from Employment and Skelly Meeting
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PAST CORRECTIVE AND DISCIPLINARY ACTIONS

1. 2020 Ten-Day Suspension: Dishonesty; Misuse of City Time and Resources; Violation of Department Policy and Procedures: Leaving Assigned Zone, Notifying supervisor after completing work early, Using Skidsteer; and Violation of the City's Attendance and Punctuality Policy.
2. 2019 One-Day Suspension: Continued excessive absenteeism; continued pattern of sick leave abuse; and violation of attendance and punctuality policy.

SKELLY MEETING

You are entitled to bring a representative to the *Skelly* meeting. You are not required to attend the *Skelly* meeting and instead, you may submit a written response with any relevant written materials for the *Skelly* officer and the Department to consider before making a final decision. If you choose this option, you must submit your written materials to Jimenez at Jason.jimenez@sfgov.org or 2323 Cesar Chavez Street, Building A, San Francisco, CA 94124 by close of business on August 18, 2021.

If you need to reschedule the *Skelly* meeting, you must inform Jimenez at (415) 695-2033 by August 18, 2021. Please be advised that the Department allows for only one reschedule of the *Skelly* meeting. If you neither appear at the meeting nor submit any written materials, the meeting officer and the Department will make a decision based on the materials referenced in this letter and the attachments. If you have any questions in this matter, please contact Jimenez.

Sincerely,



Alaric Degrafinried
Acting Director, San Francisco Public Works

cc: DiJaida Durden, Deputy Director for Operations
Carla Short, Superintendent, Bureau of Urban Forestry
Jason Jimenez, Senior Employee and Labor Relations Analyst
Personnel File

EXHIBITS

1. 2021 Investigatory Report



Alaric Degrafinried, Acting Director | Director's Office

alaric.degrafinried@sfdpw.org | T. 628.271.2677 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

Via Hand Delivery

July 29, 2021

Jose Santiago



Re: Notice of Proposed Dismissal from Employment with the City and County of San Francisco and *Skelly* Meeting

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BACKGROUND

London N. Breed, Mayor | sfpublicworks.org | [@sfpublicworks](https://twitter.com/sfpublicworks)

Santiago
 Notice of Proposed Dismissal from Employment and Skelly Meeting
 Page 2 of 7

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Your dishonesty; misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area; and violation of City's Attendance and Punctuality Policy has continued.

B. December 1, 2020 Whistleblower Complaint

The Department received a Whistleblower Complaint from the City's Whistleblower Program that on December 1, 2021 at approximately 12:15 p.m., a Department employee (Hispanic with shaved head) dropped off 20 rolls of sod owned by the City to a private residence at 370 Naples Street driving a white twin cab pick-up vehicle 450-608. The Whistleblower program provided the GPS report for 450-608. GPS showed the vehicle stopped at the following locations:

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RECORDS AND INFORMATION

In addition to the GPS records, the following records were reviewed:

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GPS records show that you drove City vehicle 450-608 to Sloat Blvd. and Sunset Avenue where the Department stored sod, where you remained for 21 minutes. Thereafter, you drove the City vehicle to 377 Naples Street where you remained for 11 minutes.

3. Payroll and Time Records

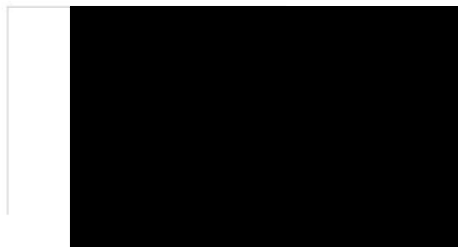
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4. Cost of Sod

The City paid approximately \$4.25 per roll for the sod so 20 rolls of sod would cost approximately \$85.00.

5. Your Picture from the City's PeopleSoft Records

Jose A Santiago III



FINDINGS AND ANALYSIS

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1. You denied that on December 1, 2020 at approximately 12:15 p.m., you dropped off 20 rolls of sod at 370 Naples Street in City vehicle 450-608. However, it is undisputed that you worked on December 1, 2020, was assigned to City vehicle 450-608, and that GPS records confirm that City vehicle 450-608 drove to Sloat and Sunset (where sod was stored), and then drove to 377 Naples Street. Moreover, the individual who made the complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify you as a Hispanic and you have a shaved head.
2. You alleged that Reed said the sod was going to go to waste and told staff to take the leftover sod if they wanted. All five witnesses interviewed from the crew said that they did not hear Reed tell staff that they can take the sod. Rather, they heard Reed tell Gonzales and Roberts to take the sod to the dump. Therefore, it is more likely than not that you were dishonest and Reed did not tell staff that they can take the sod.

Charge 2: Misuse of City Time and Resources

The City's Use of City and County Property for Business Purposes Only Policy contained in the City's Employee Handbook states in relevant part:

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited.

On December 1, 2020, you misused City resources when you took sod, which is City property, without approval, and dropped off 20 rolls of sod to a private residence at 370 Naples Street. GPS records confirm that you drove to the location where the Department's sod was stored and was there from 11:29 a.m. to 11:50 a.m. and then from there you drove to 370 Naples Street, where you remained from 12:12 p.m. to 12:23 p.m. Moreover, the Whistleblower complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify you as a Hispanic and you have a shaved head.

Additionally, on December 1, 2020, you reported late to work by 2 hours, you were supposed to start work at 5:00 a.m. but did not start officially working until you started driving City vehicle 450-608 at 7:06 a.m.

From 7:06 a.m. to 8:14 a.m., you misused City time and resources when you were not at your assigned work location and instead drove and parked at one non-work location at 4228 Ocean Avenue. Your work assignment was at Junipero Serra Boulevard at Ocean Avenue. GPS records show that you arrived at that work location at 8:25 a.m. and that the vehicle was parked there for 2 hours and 1 minute. Thereafter, you misused City time and resources again when you were not at your assigned work location and instead drove and parked at four more non-work locations.

Santiago
 Notice of Proposed Dismissal from Employment and Skelly Meeting
 Page 5 of 7

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
Sloat Blvd at Sunset Avenue	14 minutes	11:29 a.m. to 11:50 a.m. (21 min)
377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

Since you were AWOL for two hours (from 5:00 a.m. to 7:00 a.m.) and was at your assigned work area (Junipero Serra Blvd) for only two hours, you misused four hours of City time that day.

Charge 3: Violation of Department Policy and Procedures (Leaving Assigned Work Area)

The March 16, 2016 Appropriate Use of City Vehicles policy memo from Larry Stringer, former Deputy Director for Operations states in relevant part:

All field employees are required to take coffee and lunch breaks within their assigned areas if you must leave your area for any reason, you must contact your supervisor for approval before hand. City vehicles must remain in their assigned districts.

As discussed above, on December 1, 2020, you drove to and parked your City vehicle at five different locations which were outside of your assigned work area that day.

You did not notify your supervisor that you would stop at those five locations that are not your assigned work areas. There was also no record of any service orders or special projects to be fulfilled at those locations that day, thus you were in violation of Department policy for leaving your work area without supervisor authorization.

Charge 4: Violation of City's City Vehicles Policy, the Citywide Vehicle Use Policy, and the Department's City Vehicle Use Policy.

The City's Vehicles Policy contained in the City's Employee Handbook states in relevant part:

Like all City resources, City vehicles are to be used for City business only. City vehicles may not be used for personal business. Employees who violate the Vehicle Code or any other applicable laws and City policies in City vehicles may be subject to disciplinary action, up to and including termination.

The Citywide Vehicle Use Policy states in relevant part:

Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of City business.

Santiago
Notice of Proposed Dismissal from Employment and Skelly Meeting
Page 6 of 7

The November 2, 2017 City Vehicle Use Policy memo from Larry Stringer, former Deputy Director for Operations (DDO) states in relevant part:

All City vehicles are for official City business use only. Employees may not use a City vehicle for personal errands.

On December 1, 2020, you violated the City's City Vehicles Policy contained in the City's Employee Handbook; the Citywide Vehicle Use Policy; and the DDO's City Vehicle Use Policy memo when you used a City vehicle and City resources for non-City business when you drove and parked your City vehicle at five non-work locations.

Charge 5: Violation of City's Attendance and Punctuality Policy

The City's Attendance and Punctuality Policy contained in the City's Employee Handbook states in relevant part:

Regular and prompt attendance is an essential requirement of your job. As a City employee, you are to report to your work station at your scheduled work time. Your time records must accurately reflect the time you start work and the number of hours worked in every work day.

On December 1, 2020, you were instructed to work at the Junipero Serra Boulevard Project where you worked from 8:25 a.m. to 10:26 a.m., for a total 2 hours. You left the Junipero Serra Boulevard Project at 10:26 a.m. and after did not perform any more work that day as you drove and parked the City vehicle at five non-work locations.

While you were paid for working 6 hours from 7:00 a.m. to 1:00 p.m., you did not work the entire 6 hours. You only spent a total of 2 hours at your assigned work area. You violated the City's Attendance and Punctuality policy when you did not accurately reflect the time you worked on December 1, 2020.

On November 21, 2014, you acknowledged you read and understood the City Employee Handbook.

You have a History and Pattern of Misusing City Resources, Being Dishonest and Violating City and Department Policies

On September 24 and 25, 2019, you engaged in similar misconduct as addressed in this investigation because you failed to report to the work sites on time and instead drove around the City in a City vehicle without performing any work; you reported working for more hours than you actually did. You were also found to be dishonest when questioned about your whereabouts and actions. Although you served a 10 day-suspension from June 3 to 16, 2020, six months later, you again engaged in the same misconduct when he took 20 rolls of sod and dropped it off at a private residence and then drove to various locations which were not your assigned work locations.

Santiago
Notice of Proposed Dismissal from Employment and Skelly Meeting
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PAST CORRECTIVE AND DISCIPLINARY ACTIONS

1. 2020 Ten-Day Suspension: Dishonesty; Misuse of City Time and Resources; Violation of Department Policy and Procedures: Leaving Assigned Zone, Notifying supervisor after completing work early, Using Skidsteer; and Violation of the City's Attendance and Punctuality Policy.
2. 2019 One-Day Suspension: Continued excessive absenteeism; continued pattern of sick leave abuse; and violation of attendance and punctuality policy.

SKELLY MEETING

You are entitled to bring a representative to the *Skelly* meeting. You are not required to attend the *Skelly* meeting and instead, you may submit a written response with any relevant written materials for the *Skelly* officer and the Department to consider before making a final decision. If you choose this option, you must submit your written materials to Jimenez at Jason.jimenez@sfgov.org or 2323 Cesar Chavez Street, Building A, San Francisco, CA 94124 by close of business on August 18, 2021.

If you need to reschedule the *Skelly* meeting, you must inform Jimenez at (415) 695-2033 by August 18, 2021. Please be advised that the Department allows for only one reschedule of the *Skelly* meeting. If you neither appear at the meeting nor submit any written materials, the meeting officer and the Department will make a decision based on the materials referenced in this letter and the attachments. If you have any questions in this matter, please contact Jimenez.

Sincerely,



Alaric Degrafinried
Acting Director, San Francisco Public Works

cc: DiJaida Durden, Deputy Director for Operations
Carla Short, Superintendent, Bureau of Urban Forestry
Jason Jimenez, Senior Employee and Labor Relations Analyst
Personnel File

EXHIBITS

1. 2021 Investigatory Report

City & County of San Francisco
London N. Breed, Mayor



Office of the City Administrator
Carmen Chu, City Administrator
Chanda Ikeda, Human Resources Director

INVESTIGATIVE REPORT

DS
DD

TO: Dijaida Durden, Deputy Director for Operations, San Francisco Public Works

THROUGH: Carla Short, Superintendent, Bureau of Urban Forestry, San Francisco Public Works *CS*

THROUGH: Svetlana Vaksberg, Employee and Labor Relations Division Director, City Administrator Human Resources *SV*

FROM: Jason Jimenez, Senior Employee and Labor Relations Analyst, City Administrator Human Resources *JJ*

DATE: July 26, 2021

SUBJECT: Whistleblower Complaint #BHL46g84
Jose Santiago, 3417 Gardener, Bureau of Urban Forestry, San Francisco Public Works

I. BACKGROUND

On August 31, 2013, San Francisco Public Works (Department) hired Jose Santiago to a 3417 Gardener, Permanent Civil Service (PCS) position. He is assigned to Bureau of Urban Forestry (BUF). Santiago performs maintenance and landscaping renovation tasks to care for the City's athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas. (**Exhibit 1**)

A. Prior Discipline

In 2020, Santiago received a 10-day suspension for misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area, failing to notify supervisor after completing work early; violation of the City's Attendance and Punctuality Policy; and dishonesty. These charges were based on his misconduct as follows: (1) On September 24, 2019, he and his co-worker failed to report to their assigned work location and spent 79 continuous minutes driving to Golden Gate Park, which is 3.8 miles away from their assigned work location; (2) On September 25, 2019, he and the same co-worker arrived late to their assigned work location and could not account for their time; and (3) on September 25, 2019, after completing their assignment, he and his co-worker drove around in the City vehicle for 96 continuous minutes; the vehicle was stopped ten miles away from their assigned work location.

1155 Market Street, 4th Floor, San Francisco, CA 94103-0903
Main: (415) 554-6000 Fax1: (415) 554-6042 Fax2: (415) 554-4827

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Santiago's dishonesty; misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area; and violation of City's Attendance and Punctuality Policy has continued. **(Exhibit 13)**

B. December 1, 2020 Whistleblower Complaint

The Department received a Whistleblower Complaint from the City's Whistleblower Program that on December 1, 2021 at approximately 12:15 p.m., a Department employee (Hispanic with shaved head) dropped off 20 rolls of sod owned by the City to a private residence at 370 Naples Street driving a white twin cab pick-up vehicle 450-608. **(Exhibit 2)** The Whistleblower program provided the GPS report for 450-608. **(Exhibit 3)** GPS showed the vehicle stopped at the following locations:

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
Sloat Blvd at Sunset Avenue	14 minutes	11:29 a.m. to 11:50 a.m. (21 min)
377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

On February 25, 2021, City Administrator Human Resources (CAHR) was asked to further investigate the complaint.

II. INVESTIGATION

A. RECORDS AND INFORMATION

In addition to the GPS records, the following records were reviewed:

1. Keywatcher

The Department's Keywatcher report identifies the names of employees who take and return City vehicle keys and when the keys were taken. The December 1, 2020 Keywatcher report for City vehicle 450-608 identifies Douglas Reed, 3422 Park Section Supervisor and Santiago's supervisor as taking out the keys at 4:49 a.m. and Santiago as returning the keys to the vehicle at 12:52 p.m. **(Exhibit 4)**. Due to COVID-19 safety protocols, the Department implemented safety procedures whereby supervisors check out keys on behalf of their employees to reduce the number of people gathering at the key watch system.

2. GPS Records

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GPS records show that Santiago drove City vehicle 450-608 to Sloat Blvd. and Sunset Avenue where the Department stored sod, where he remained for 21 minutes. (**Exhibit 14**) Thereafter, he drove the City vehicle to 377 Naples Street where he remained for 11 minutes.

3. Payroll and Time Records

On December 1, 2020, Santiago reported working 6 hours and was AWOL for 2 hours. His work schedule was supposed to be at 5:00 a.m. through 1:30 p.m. but he actually started working at 7:06 a.m. (**Exhibit 11**)

4. Cost of Sod

The City paid approximately \$4.25 per roll for the sod so 20 rolls of sod would cost approximately \$85.00.

5. Santiago's Picture from the City's PeopleSoft Records

Jose A Santiago III



B. WITNESS INTERVIEWS

1. Douglas Reed

Douglas Reed, 3422 Park Section Supervisor, BUF, said that Santiago's work schedule is 5:00 a.m. to 1:30 p.m. and that on December 1, 2020, Santiago was late to work and did not notify the Department so Santiago was marked AWOL for 2 hours that day. When told that Santiago thought he started work at 7:00 a.m., Reed said that Santiago was mistaken and that Santiago starts work at 5:00 a.m. due to the Department's COVID procedures. Reed said that on December 1, 2020, again due to the Department's COVID procedures to limit the number of people at the Keywatcher to pick up vehicle keys, he signed out the vehicle keys of his staff and gave the keys to the employees. Santiago was late to work and therefore, Reed left Santiago's vehicle keys in vehicle 450-608 so that Santiago could drive the vehicle when he reported to work.

Santiago's December 1, 2020 work assignment was to work with Amy Craven, 3422 Park Section Supervisor at Junipero Serra Boulevard near Ocean Avenue. When asked why

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Santiago was at the five other non-work locations, Reed said that Santiago's only assigned work area that day was at Junipero Serra Boulevard and that he was not authorized to be at any other location as recorded in GPS records.

Reed said that in late November 2020, sod was being stored at the Sloat/Sunset shack. He said by mid-December 2020, the sod was going bad, dying, and not usable so he instructed Angel Gonzales and Phil Roberts, 3417 Gardeners to take the sod to the dump. Reed said he never instructed employees to take sod for non-City use.

2. The following individuals who worked with Santiago in the same crew were interviewed:

a. Leandra Butler

Leandra Butler, 3417 Gardener, confirmed that Reed ordered too much sod for the Balceta Triangle project. She said the sod was going brown and Reed told the crew to take the sod to the dump (Waste Disposal at 501 Tunnel Avenue). She said that Gonzales took the sod to the dump. Butler did not hear Reed tell staff that they can take sod. She did not see anyone take the sod.

b. Kristopher Fincher

Kristopher Fincher, 3417 Gardener, confirmed Reed over ordered sod which was sitting out at Sloat/Sunset shack and it was going brown. Fincher did not see anyone take the sod. Fincher said Reed instructed Gonzales and Roberts, to take the sod to the dump. Fincher did not hear Reed tell staff that they can take sod.

c. Jerry Gaines

Jerry Gaines, 3417 Gardener, said that Reed ordered too much sod for the Balceta Triangle project and that the extra sod was being stored at Sloat/Sunset shack and it was going bad. He did not hear Reed tell the staff to take the sod if they want because the sod was going bad and he did not see anyone take sod.

d. Angel Gonzales

Angel Gonzales, 3417 Gardener, said there was a lot of sod that was on pallets and dying at Sloat/Sunset shack. Gonzales confirmed that Reed told him to take the sod to the dump and he made three trips to the dump to get rid of the sod. Gonzales said he did not see anyone take the sod and that Reed did not tell staff that they can take the sod.

e. Phil Roberts

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Phil Roberts, 3417 Gardener, said sod was being wasted and not used at Sloat/Sunset shack. Reed told him to take the sod to the dump. Roberts did not see anyone take the sod for personal use. He also did not hear Reed tell staff that they can take the sod.

C. SANTIAGO'S INTERVIEW

On May 13, 2021, a Weingarten interview was conducted with Santiago. Daniel Ferrick, General Laborer, with San Francisco Public Works and Shop Steward with Local 261, represented Santiago. From my observation, Santiago is a bald Hispanic, around 5'8" with a medium build. Carla Short, BUF Superintendent also attended the interview.

Santiago said he has been a Gardener for 12 years. He works Monday to Friday from 7:00 a.m. to 3:30 p.m. with his 15-minute breaks at around 9:30 a.m. and 2:00 p.m. and his lunch break at around 11:30 a.m.

1. Leaving Assigned Work Area

Santiago said that the policy for leaving an assigned work area is that employees must notify their supervisor when leaving their work area. He said there are occasions when employees have to leave their work area to help out employees in other work areas but that the supervisor must be aware that the employee is leaving their assigned work area.

2. December 1, 2020

When asked why on December 1, 2020, the City vehicle he was assigned to was parked at 4228 Ocean Avenue (Lakeshore Plaza) from 7:51 a.m. to 8:14 a.m. (23 minutes), Santiago kept saying he does not remember why. He also said if he was there, then Reed did not give him any assignments that day.

When asked why his City vehicle was parked at Sloat Boulevard at Sunset Avenue (Sloat/Sunset) from 11:29 a.m. to 11:50 a.m. (21 minutes), Santiago said he does not remember but that location is where the BUF shack is located and BUF vehicles are there sitting for hours while they work or are on break. He said if he was at Sloat/Sunset, he was probably doing the same thing.

When asked why his City vehicle was parked at 377 Naples Street from 12:12 p.m. to 12:23 p.m. (11 minutes), Santiago said he does not remember but that Don Chuy's burrito restaurant is on Naples and Excelsior and that he probably parked at Naples Street to go to the restaurant because it was lunch time.

When asked why his City vehicle was parked at 601 Excelsior Avenue from 12:25 p.m. to 12:31 p.m. (6 minutes), Santiago said he does not remember but again said that Don Chuy's burrito restaurant is nearby on Naples and Excelsior. He said he must have been done working for the day and that he cannot help it if Reed does not give him enough work to do and that Reed needs to give him more work if he is roaming around the City. Santiago said

he has been doing the job for 12 years and he gets his jobs done quickly. When asked if he calls Reed to inform him he is done with the job, he said, "Yes" and that Reed rarely answers the phone.

3. Sod

When asked if he drove to Naples Street to drop off sod at a private residence, Santiago said, "No." When shown a photo of the private residence on Naples Street and if he dropped off sod at the residence, again Santiago denied the allegation.

When asked to respond to the Whistleblower complaint that a person driving a City vehicle that was assigned to Santiago was witnessed dropping off 20 rolls of sod at a private residence on Naples Street, Santiago again denied the allegation. He said, "Reed told the crew he was going to get rid of the sod. He ordered too much sod that was dying. He told people to take the sod if they wanted it. He said the sod was going to go to waste so people can take it if they want it. There was a ton of sod and it was turning yellow and going bad."

Santiago was asked if he ever talked to his co-workers about making money off of the City's sod. Santiago kept saying, "No." He then said, "I don't see the issue if Reed is telling us to take sod. People took it. Reed told people to take the sod to get rid of it. He told the crew, if they want it, they can take some. He ordered too much sod and it was dying."

III. FINDINGS AND ANALYSIS

Based on the information above, it is evident that Santiago continues to be dishonest; misuse City time and resources; violates the Department Policy and Procedures regarding leaving his assigned work area; violates the City's City Vehicles Policy, Citywide Vehicle Use Policy, and Department's City Vehicle Use Policy; and violates the City's Attendance and Punctuality Policy.

A. Santiago is Not Credible and Dishonest

Santiago was found to be dishonest and not credible for the following reasons:

1. Santiago denied that on December 1, 2020 at approximately 12:15 p.m., he dropped off 20 rolls of sod at 370 Naples Street in City vehicle 450-608. However, it is undisputed that Santiago worked on December 1, 2020, was assigned to City vehicle 450-608, and that GPS records confirm that City vehicle 450-608 drove to Sloat and Sunset (where sod was stored), and then drove to 377 Naples Street. Moreover, the individual who made the complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify Santiago as a Hispanic and he has a shaved head.
2. Santiago alleged that Reed said the sod was going to go to waste and told staff to take the leftover sod if they wanted. All five witnesses interviewed from the crew

said that they did not hear Reed tell staff that they can take the sod. Rather, they heard Reed tell Gonzales and Roberts to take the sod to the dump. Therefore, it is more likely than not that Santiago was dishonest and Reed did not tell staff that they can take the sod.

B. Misuse of City Time and Resources

The City's Use of City and County Property for Business Purposes Only Policy (**Exhibit 5**) contained in the City's Employee Handbook states in relevant part:

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited.

On December 1, 2020, Santiago misused City resources when he took sod, which is City property, without approval, and dropped off 20 rolls of sod to a private residence at 370 Naples Street. GPS records confirm that Santiago drove to the location where the Department's sod was stored and was there from 11:29 a.m. to 11:50 a.m. and then from there he drove to 370 Naples Street, where he remained from 12:12 p.m. to 12:23 p.m. Moreover, the Whistleblower complaint identified the City employee dropping off the sod as Hispanic and shaved head. City records identify Santiago as a Hispanic and he has a shaved head.

Additionally, on December 1, 2020, Santiago reported late to work by 2 hours, he was supposed to start work at 5:00 a.m. but did not start officially working until he started driving City vehicle 450-608 at 7:06 a.m.

From 7:06 a.m. to 8:14 a.m., Santiago misused City time and resources when he was not at his assigned work location and instead drove and parked at one non-work location at 4228 Ocean Avenue. His work assignment was at Junipero Serra Boulevard at Ocean Avenue. GPS records show that he arrived at that work location at 8:25 a.m. and that the vehicle was parked there for 2 hours and 1 minute. Thereafter, he misused City time and resources again when he was not at his assigned work location and instead drove and parked at four more non-work locations.

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	11 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
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377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

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Since Santiago was AWOL for two hours (from 5:00 a.m. to 7:00 a.m.) and was at his assigned work area (Junipero Serra Blvd) for only two hours, he misused four hours of City time that day.

C. Violation of Department Policy and Procedures (Leaving Assigned Work Area)

The March 16, 2016 Appropriate Use of City Vehicles policy memo (**Exhibit 6**) from Larry Stringer, former Deputy Director for Operations states in relevant part:

All field employees are required to take coffee and lunch breaks within their assigned areas if you must leave your area for any reason, you must contact your supervisor for approval before hand. City vehicles must remain in their assigned districts.

As discussed above, on December 1, 2020, Santiago drove to and parked his City vehicle at five different locations which were outside of his assigned work area that day.

Santiago did not notify his supervisor that he would stop at those five locations that are not his assigned work areas. There was also no record of any service orders or special projects to be fulfilled at those locations that day, thus Santiago was in violation of Department policy for leaving his work area without supervisor authorization.

D. Violation of City's City Vehicles Policy, the Citywide Vehicle Use Policy, and the Department's City Vehicle Use Policy.

The City's Vehicles Policy (**Exhibit 7**) contained in the City's Employee Handbook states in relevant part:

Like all City resources, City vehicles are to be used for City business only. City vehicles may not be used for personal business. Employees who violate the Vehicle Code or any other applicable laws and City policies in City vehicles may be subject to disciplinary action, up to and including termination.

The Citywide Vehicle Use Policy (**Exhibit 12**) states in relevant part:

Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of City business.

The November 2, 2017 City Vehicle Use Policy (**Exhibit 8**) memo from Larry Stringer, former Deputy Director for Operations (DDO) states in relevant part:

All City vehicles are for official City business use only. Employees may not use a City vehicle for personal errands.

On December 1, 2020, Santiago violated the City's City Vehicles Policy contained in the City's Employee Handbook; the Citywide Vehicle Use Policy; and the DDO's City Vehicle Use Policy memo when he used a City vehicle and City resources for non-City business when he drove and parked his City vehicle at five non-work locations.

E. Violation of City's Attendance and Punctuality Policy

The City's Attendance and Punctuality Policy contained in the City's Employee Handbook states in relevant part:

Regular and prompt attendance is an essential requirement of your job. As a City employee, you are to report to your work station at your scheduled work time. Your time records must accurately reflect the time you start work and the number of hours worked in every work day. (Exhibit 9)

On December 1, 2020, Santiago was instructed to work at the Junipero Serra Boulevard Project where he worked from 8:25 a.m. to 10:26 a.m., for a total 2 hours. Santiago left the Junipero Serra Boulevard Project at 10:26 a.m. and after did not perform any more work that day as he drove and parked the City vehicle at five non-work locations.

While he was paid for working 6 hours from 7:00 a.m. to 1:00 p.m., he did not work the entire 6 hours. Santiago only spent a total of 2 hours at his assigned work area. Santiago violated the City's Attendance and Punctuality policy when he did not accurately reflect the time he worked on December 1, 2020.

On November 21, 2014, Santiago acknowledged he read and understood the City Employee Handbook. **(Exhibit 10)**

F. Santiago Has a History and Pattern of Misusing City Resources, Being Dishonest and Violating City and Department Policies

On September 24 and 25, 2019, Santiago engaged in similar misconduct as addressed in this investigation because he failed to report to the work sites on time and instead drove around the City in a City vehicle without performing any work; he reported working for more hours than he actually did. He was also found to be dishonest when questioned about his whereabouts and actions. **(Exhibit 14)** Although he served a 10 day-suspension from June 3 to 16, 2020, six months later, he again engaged in the same misconduct when he took 20 rolls of sod and dropped it off at a private residence and then drove to various locations which were not his assigned work locations.

EXHIBITS

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- Exhibit 1: 3417 Gardener Job Description
- Exhibit 2: December 1, 2020 Whistleblower Complaint
- Exhibit 3: December 1, 2020 GPS Report
- Exhibit 4: KeyWatcher Report
- Exhibit 5: Use of City and County Property for Business Purposes Only Policy
- Exhibit 6: March 16, 2016 Appropriate Use of City Vehicles policy memo
- Exhibit 7: City Vehicles Policy
- Exhibit 8: November 2, 2017 City Vehicle Use Policy memo
- Exhibit 9: City's Attendance and Punctuality Policy
- Exhibit 10: Employee Handbook Acknowledgement
- Exhibit 11: December 1, 2020 Payroll records
- Exhibit 12: Citywide Vehicle Use Policy
- Exhibit 13: Notice of Suspension and *Skelly* Decision for Santiago's Dishonesty; Misuse of City Time and Resources; Violation of Department Policy and Procedures: Leaving Assigned Zone
- Exhibit 14: Sloat and Sunset photo with sod.

EXHIBIT 1

City and County of San Francisco Gardener (#3417)

DEFINITION

Under general supervision, performs routine maintenance and landscaping renovation tasks to care for athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas.

Essential functions of this class include: preparing soil by rototilling, spading and fertilizing; maintaining plants by planting, transplanting, cultivating, irrigating and pruning; identifying a large variety of plant material and their cultural requirements; identifying pests and diseases, performing techniques such as Integrated Pest Management (IPM) to control or mitigate the pests and diseases; maintaining lawns by raking, edging, mowing, watering, weeding, aerating, fertilizing, and over seeding; maintaining grounds by clearing brush and debris, sweeping and raking public activity areas, cleaning up litter and clearing drains; changing sprinkler heads when required; operating power and manual equipment and/or tools such as mowers, watering equipment, gopher traps, and other types of gardening equipment and/or tools; performing routine maintenance on landscaping equipment and/or tools to ensure they are in good working condition; performing general maintenance tasks on grounds and facilities to ensure clean and safe premises; and performing other job duties as required.

DISTINGUISHING FEATURES

The 3417 Gardener performs skilled, semi-skilled and manual labor work related to the routine maintenance and landscaping renovation of athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas.

The 3417 Gardener is distinguished from the 3422 Park Section Supervisor in that the latter is the entry-level supervisory class in the Agricultural and Horticulture series.

SUPERVISION EXERCISED

None

EXAMPLES OF IMPORTANT AND ESSENTIAL DUTIES

According to Civil Service Commission Rule 109, the duties specified below are representative of the range of duties assigned to this job code/class and are not intended to be an inclusive list.

1. Prepares soil by rototilling, grading, spading, and fertilizing to promote plant growth and to prevent drainage problems.
2. Maintains plants by planting, transplanting, cultivating, irrigating and pruning to promote plant growth and to prevent plant deterioration.

3. Identifies and destroys pests and diseases on plants and/or lawn areas by performing techniques such as Integrated Pest Management (IPM) to control and/or mitigate the pests and diseases.
4. Maintains lawn areas by raking, edging, mowing, watering, weeding, aerating, fertilizing, over seeding and/or other landscaping function(s) to promote lawn health and erosion control.
5. Maintains grounds of athletic fields, squares, parks, playgrounds, stadiums, thoroughfares and/or other landscape areas by clearing brush and debris, sweeping and raking areas, cleaning up litter, clearing drains, and preventing hazardous conditions.
6. Operates power and manual equipment and/or tools such as mowers, water equipment, gopher traps, and other types of gardening equipment and/or tools to assist in maintaining landscape areas.
7. Performs routine maintenance on gardening equipment and/or tools to ensure they are maintained and in good working condition.
8. Performs general maintenance duties on grounds and facilities such as athletic fields, sandboxes in parks, public easements, restroom facilities, irrigating systems, and other ground and facility areas to ensure clean and safe premises.
9. May be assigned to work with and/or direct the work of park volunteers.

KNOWLEDGE, SKILLS AND ABILITIES

Knowledge of: practices, methods, and procedures used to identify erosion of soil, squares, parks, playgrounds, stadiums and other landscaped areas and the knowledge to perform corrective measures; knowledge of safety practices, methods and procedures (e.g., OSHA and other State regulations) used to ensure the safety of employees and the general public; knowledge and ability to perform landscaping procedures to maintain grounds and facility areas; knowledge to correctly identify and control insects, diseases and other pests that are harmful to plants and lawn areas; knowledge and ability to identify various species of plants and to care for the plants based on their cultural requirements; knowledge of irrigation principles which include the ability to operate and troubleshoot sprinklers, time clocks, detect leaks, and perform minor repairs as needed.

Ability to: safely use and maintain gardening equipment and tools such as pruning shears, rototillers, spades, rakes, power chain saws, chippers, mowers, hand and power edgers, wheelbarrows, hoes and other gardening equipment and/or tools; safely lift, carry or move large plants in containers, fertilizer, hoses, power tools and equipment, ladders, debris and other gardening equipment and products as needed; communicate written information in a clear, concise and understandable manner to staff, departmental personnel and the general public; communicate effectively and courteously with staff, other departmental personnel, and the general public as well as understand and correctly follow instructions; establish and maintain effective and cooperative working relationships and effectively work with staff, departmental personnel and the general public; maintain a valid driver's license in order to drive a motor vehicle.

MINIMUM QUALIFICATIONS

These minimum qualifications establish the education, training, experience, special skills and/or license(s) which are required for employment in the classification. Please note, additional qualifications (i.e., special conditions) may apply to a particular position and will be stated on the exam/job announcement.

Education:

Experience:

1. Three years of verified experience in the care, construction or maintenance of landscaped areas by planting, weeding, fertilizing, irrigating, pruning, and controlling pests in the following areas: sports and athletic natural turf fields, golf courses, parks, ornamental gardens, arboreta, greenhouses, nurseries, botanical gardens and/or public landscaped areas; OR
2. Possession of a Certificate of Achievement from an accredited college or university in horticulture, landscaping, gardening, nursery and garden center operation, commercial cut flower and greenhouse production or related field and two years of verifiable experience in the care, construction or maintenance of landscaped areas by planting, weeding, fertilizing, irrigating, pruning, and controlling pests in the following areas: sports and athletic natural turf fields, golf courses, parks, ornamental gardens, arboreta, greenhouses, nurseries, botanical gardens and/or public landscaped areas; OR
3. Possession of an Associate of Arts or Science degree from an accredited college or university in horticulture, landscaping, gardening, nursery and garden center operation, commercial cut flower and greenhouse production or related field and 18 months of verifiable experience in the care, construction or maintenance of landscaped areas by planting, weeding, fertilizing, irrigating, pruning, and controlling pests in the following areas: sports and athletic natural turf fields, golf courses, parks, ornamental gardens, arboreta, greenhouses, nurseries, botanical gardens and/or public landscaped areas; OR
4. Completion of 3,000 hours of the City and County of San Francisco's gardener apprenticeship program.

License and Certification:

Requires possession of a valid California driver's license.

Substitution:

NOTES

SUPPLEMENTAL INFORMATION

NOTE:

The nature of the work may require exposure to inclement weather conditions and may require exposure to infectious and/or hazardous materials and/or conditions. All positions require driving. Some positions may require riding mowers and driving small utility vehicles. Some positions may require weekend or shift work.

SPECIAL REQUIREMENTS:

The 3417 Gardener requires the ability to safely and correctly lift, drag and/or move with

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assistance large and/or heavy plants and equipment to truck bed level and the ability to kneel, bend and squat for considerable periods of time. The probationary period will be used to evaluate these abilities.

PROMOTIVE LINES

To: 3422 Park Section Supervisor

From: 3410 Apprentice Gardener

ORINATION DATE: 04/18/1983

AMENDED DATE: 07/21/10, 12/5/11, 10/10/18

REASON FOR AMENDMENT: To accurately reflect the current tasks, knowledge, skills & abilities, and minimum qualifications.

BUSINESS UNIT(S): COMMN SFCCD SFMTA SFUSD

EXHIBIT 2

Issue(s) Identified by the Whistleblower Program

1. Jose Santiago used a city vehicle to inappropriately drop off sod at a residential address.
2. Jose Santiago misappropriated city property (sod) and dropped it off at a residential address.

Text of Actual Complaint

"DPW Worker dropped off about 20 rolls of Sod to a private residence at 370 Naples. Driving a white twin cab pickup. Hispanic, shaved head. was there maybe 10 minutes
truck number started with 450
couldn't see the remaining 3 numbers possible 681
small city emblem on door
Truck had a large sticker by the gas tank drivers side"

Confidentiality notice: *The information in this document contains confidential whistleblower information. This document contains information intended only for the use of the individual or entity which received the document. If the reader of this document is not the intended recipient or the employee or agent responsible for delivering it to the intended recipient, any dissemination, publication or copying of this*

important that you respond to this complaint in a timely manner.

At minimum, your response to the Whistleblower Program should include the methodology of the investigation, investigation findings, and any corrective or preventative action(s) your department took in response to the complaint.

Complaint: BHL46g84

Complaint receipt date: December 1, 2020

Complaint response due: January 29, 2021

Subject Name: Jose Santiago

Subject Department: DPW (Bureau of Urban Forestry)

Complainant:

- Anonymous
 Contact Information Provided to the Whistleblower Program

What did the subject do or fail to do that was wrong?

Issue(s) Identified by the Whistleblower Program

1. Jose Santiago used a city vehicle to inappropriately drop off sod at a residential address.
2. Jose Santiago misappropriated city property (sod) and dropped it off at a residential address.

CONFIDENTIAL—Whistleblower Complaint

Preliminary Whistleblower investigation: GPS records confirm vehicle 450608 was at the reported address at the reported time. DPW has confirmed that Jose Santiago was the driver of the vehicle at the time and that sod is sometimes used/purchased by the department.

What policy, rule, regulation, or law do you believe to have been violated?

"giving away city property or using a city vehicle for private purposes. abusing company time while working. Saw him try to jump up the gate but didn't make it."

When did the incident occur? When were you made aware of the problem?

"12-01-20 about 1215pm"

"saw him double park and unload the sod on 12-01-20 and left them in front of 370 Naples street"

Where did the incident take place?

370 Naples Street

EXHIBIT 3

Vehicle Label	Satellite	Driver	Trip Begin Tti	Trip Duration (dd:hh:mm)	Stop Begin Tti	Stop Duration (dd:hh:mm)	Location Address
450608		Unassigned	12/1/20 7:06:41 AM	00:00:45	12/1/20 7:51:52 AM	00:00:22	4228 Ocean Ave, San Francisco, CA 94132-1219 US
450608		Unassigned	12/1/20 8:14:16 AM	00:00:12	12/1/20 8:25:57 AM	00:02:01	Junipero Serra Blvd, San Francisco, CA 94127 US
450608		Unassigned	12/1/20 10:26:51 AM	00:00:11	12/1/20 10:38:10 AM	00:00:38	566 Laguna Honda Blvd, San Francisco, CA 94127-1018 US
450608		Unassigned	12/1/20 11:15:44 AM	00:00:14	12/1/20 11:29:29 AM	00:00:03	Sloat Blvd, San Francisco, CA 94132 US
450608		Unassigned	12/1/20 11:32:42 AM	00:00:01	12/1/20 11:33:28 AM	00:00:17	Sloat Blvd, San Francisco, CA 94132 US
450608		Unassigned	12/1/20 11:50:01 AM	00:00:23	12/1/20 12:12:51 PM	00:00:11	377 Naples St, San Francisco, CA 94112-2058 US
450608		Unassigned	12/1/20 12:23:55 PM	00:00:02	12/1/20 12:25:40 PM	00:00:06	601 Excelsior Ave, San Francisco, CA 94112-2123 US
450608		Unassigned	12/1/20 12:31:30 PM	00:00:24	12/1/20 12:55:03 PM		2234 Cesar Chavez St, San Francisco, CA 94124-1002 US

EXHIBIT 4



Audit Key Transactions Report Morse Watchmans Inc.

Site: BUF	Report DateTime: 3/2/2021 11:55:36 AM
Transaction Time Zone: (UTC-08:00) Pacific Time (US & Canada)	Local Time Zone: (UTC-08:00) Pacific Time (US & Canada)
Transaction DateTime: 12/1/2020 12:00:00 AM - 12/1/2020 11:59:59 PM	Created By: cshort
Daily Time Filter: 12:00:00 AM - 11:59:59 PM	
Transaction DOW: SUN, MON, TUE, WED, THU, FRI, SAT	
User(s): All	
Key(s): 26	

Keys Out

Keys In

Key No: 26		Key Name: 450608									
Date/Time Out	Out Code	By User	Key Access Dept	RWT	Date/Time In	In Code	By User	Key Access Dept	RWT	Time In Use (HH:MM)	
12/1/2020 4:48:18 AM		Reed, Douglas		KW-BUF1	12/1/2020 12:52:22 PM		Santiago III, Jose		KW-BUF1	0008:04	
							Total Time In Use:		0008:04		

Total Records: 2
Total Pages: 1
REPORT END

EXHIBIT 5

CITY AND COUNTY OF SAN FRANCISCO		DEPARTMENT OF HUMAN RESOURCES
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POLICY REGARDING USE OF CITY AND COUNTY PROPERTY FOR BUSINESS PURPOSES ONLY

No officer or employee may use, nor allow any other person to use, City resources for any non-City business purpose. Use of City resources for personal, political, employee organization or other non-City business is strictly prohibited. City resources include, but are not limited to, facilities, equipment, devices, telephones, computers, copier, fax machine, e-mail, internet access, supplies and any time for which you are receiving compensation from the City. Inappropriate uses of City resources include, but are not limited to: online gambling; viewing sports events online; playing games, streaming video or music on a work computer; viewing or distributing materials that are not related to City business or that are sexually explicit; and frequent talking on a personal cell phone or texting during work hours.

Your use of the internet may be monitored by departmental Information Technology staff or other City staff as necessary at any time. This may include monitoring the amount of time you spend on the Internet, the Internet websites you visit and/or the content of the information you send, receive and view using the internet. Monitoring may occur either routinely or as a result of a concern that you may be using the Internet inappropriately, and may occur at any time and without warning or notice.

Further, the City's E-Mail system may only be used for authorized official communications. The City may also monitor your E-Mail usage at any time and without warning or notice. Inappropriate use of City resources may result in discipline, up to and including termination of employment.

City and County of San Francisco Department of Human Resources Employee Handbook January 2012, p. 48.

EXHIBIT 6



Edwin M. Lee
Mayor

Mohammed Nuru
Director

Larry Stringer
Deputy Director

Office of the Deputy Director
for Operations

2323 Cesar Chavez St.
San Francisco, CA 94124
tel 415-695-2003

sfpublicworks.org
facebook.com/sfpublicworks
twitter.com/sfpublicworks

March 18, 2016

To: All Public Works Operations Employees
From: Larry Stringer, Deputy Director for Operations *L.S.*
RE: Appropriate Use of City Vehicles

It has come to my attention that the Department's policies and procedures regarding the appropriate use of City vehicles is not being followed. This policy is being re-issued as a reminder that City vehicles are for official City business use only. Employees are not to use a City vehicle for personal errands.

In addition, please observe the following requirements:

1. All keys to City vehicles must be checked out of the Key Watcher System at the beginning of each shift and returned at the end of each shift. No one is to take the keys to a City vehicle home with them for any reason. Employees are not permitted to take any City equipment home.
2. Seat belts must be worn at all times when operating a City vehicle. Smoking is not permitted in City vehicles or on the premises at the Yard.
3. City trucks are not to be parked in any parking lot unless they are on official City business. They are to be parked legally on the street.
4. City vehicles should not be in the employee parking lot, and should not be double parked on Kansas Street in front of the Yard. Personal vehicles are not allowed to enter or park at the Yard unless with prior approval.
5. Vests are to be worn and zipped up at all times when operating a City vehicle. They need to be taken off during break or lunch time.
6. Parking in a red zone, blue zone, bus zone, or by a fire hydrant is NOT allowed. Also, City vehicles are not permitted to block a crosswalk or double park. Text or talk on cell phones while driving is illegal and also violates the City's and department's policy for the use of cell phones.
7. City vehicles that are scheduled to travel outside of city limits are required to call the Radio Room and state where they are going in the purpose of the travel.
8. All field employees are required to take coffee and lunch breaks within their assigned areas if you must leave your area for any reason, you must contact your supervisor for approval before hand. City vehicles must remain in their assigned districts.

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9. When operating a City vehicle, you must comply with all state laws and Public Works/GSA's vehicle policies. You will be held responsible for any moving and or parking violations issue to you and/or your assigned City vehicle.
10. Vehicle accidents require police reports and it must be reported immediately to the Radio Room and your Supervisor. Any injuries must be reported no later than the end of the shift on the day they occur.
11. Vehicles are not to be left idling. Remove keys when exiting vehicle.
12. No valuable should be left visible in the cab of vehicle when exiting or parking vehicle.

Anyone observed violating these policies will be subject to disciplinary action. Your attention and cooperation with these policies is required.

EXHIBIT 7



CITY VEHICLES

City vehicles are a resource whose use is limited by law. Like all City resources, City vehicles are to be used for City business only. Except where explicitly authorized to do so, employees may not take City vehicles home. City vehicles may not be used for personal business. Any citations you receive while using a City vehicle are your responsibility. Employees who violate the Vehicle Code or any other applicable laws and City policies in City vehicles may be subject to disciplinary action, up to and including termination.

City and County of San Francisco Department of Human Resources Employee Handbook January 2012, p. 51.



Edwin M. Lee
Mayor

Mohammed Nuru
Director

Larry Stringer
Deputy Director

Office of the Deputy Director
for Operations

2323 Cesar Chavez St.
San Francisco, CA 94124
tel 415-695-2003

facebook.com/sfpublicworks
twitter.com/sfpublicworks

EXHIBIT 8

DATE: November 2, 2017
TO: All Public Works Operations Employees
FROM: Larry Stringer *LS*
Deputy Director for Operations
SUBJECT: **City Vehicle Use, Policies and Procedures**

I will begin by thanking all of our employees who have been driving safely and have had no vehicle accidents. I appreciate your conscientiousness and your efforts to operate vehicles safely. I also want to thank all of you who follow the vehicle use policy.

I want to point out that in addition to our Operations and safe driving policies, all of us in Operations must adhere to the Citywide Vehicle Use Policy. No smoking or usage of cell phone while operating City Vehicles. Some other areas covered in the policy that the drivers are responsible and accountable for are:

- Possession of a valid California motor vehicle driver's license with the appropriate classification and any required endorsements needed for operating the vehicle assigned to the operator;
- Operate motor vehicles in a safe manner at all times;
- Comply with all applicable federal, state and local laws and regulations;
- Vehicles without a current BIT sticker shall not be operated until an inspection has been completed and a sticker is placed on the windshield of the vehicle;
- Report any mechanical or safety defects to your supervisor immediately;
- Report moving violations or parking citations to your supervisor by end of their work shift;
- All occupants are required to use seat belts;
- Vehicles and equipment are not to be alter in any way without the supervisors' or Central Shop's approval;
- Never operate a computer or other electronic device while driving a vehicle;
- Pull off the road to a safe location prior to making or receiving phone calls or using an electronic device ;
- Do not transport any personal guest or animal in a City vehicle unless approved by the Department Head or the designee and the guest is essential to municipal business;
- Do not park City vehicle in private parking lots;
- No driving through fast food drive-thru;
- All City vehicles are for official City business use only. Employees may not use a City vehicle for personal errands;
- All City vehicles need to have a pre-trip inspection done and signed by your supervisor.

Citywide Policy further stipulates that vehicle operating privileges may be revoked if a driver does not adhere to any of the responsibilities listed in the policy or refuses to undergo drug or alcohol testing in accordance with organization policies or as required by applicable state or local jurisdiction. Please review entire vehicle usage policy for more information.

I appreciate your continued support and cooperation in complying with all Public Works, GSA and Citywide policies. With your help, we will be able to keep our incidents of traffic accidents down. Thank you.

EXHIBIT 9

Attendance and Punctuality

Regular and prompt attendance is an essential requirement of your job. As a City employee, you are to report to your work station at your scheduled work time. Your time records must accurately reflect the time you start work and the number of hours worked in every work day.

All planned absences must be requested and approved in advance. If illness or some other emergency causes an unplanned or unforeseeable absence, you must notify your department as soon as possible on the first day of absence, and keep the department advised daily during the absence. In the case of an extended unforeseeable absence, you may be asked to complete forms and submit medical certifications as appropriate during your leave. Improper use of sick leave, failure to present medical certification when required, excessive absenteeism, tardiness, unauthorized absence or failure to notify your department when you are unable to report to work, may result in sick leave restriction, disciplinary action or termination.

Appearance and Dress Code

As a City employee, you represent the City and your department when you are on duty and/or when you are in a City uniform. Employees are expected to be neat and clean, and to dress for work according to generally accepted business and professional standards as dictated by their work assignment and as required by their department. The City reserves the right to restrict dress for legitimate reasons relating to safety, hygiene or environmental conditions.

Maintenance of Minimum Qualifications

You must possess and maintain the qualifications required by law and by the announcement of the examination under which you were appointed.

Business Hours

Except as otherwise provided in a collective bargaining agreement applicable to you or based on your department's operational needs, the typical workweek is 40 hours, consisting of five workdays of eight hours each. The City's official business hours are from 8:00 a.m. to 5:00 p.m.

Overtime and Compensatory Time Off

If you are required by your manager/supervisor to work overtime, contact your departmental personnel officer for information regarding your eligibility for overtime payment or compensatory time off. Employees in classifications designated "Z" are exempt from overtime under the Fair Labor Standards Act, but may be entitled to compensatory time off if provided by the collective bargaining agreement.

EXHIBIT 10

City and County of San Francisco

Civil Service Commission



EMPLOYEE HANDBOOK ACKNOWLEDGEMENT

The Employee Handbook has been prepared to give you important information on the City and County's commitment to diversity, policies on work schedules, safety on the job, and your obligations as an employee. It also provides you with the basics about your health care and retirement benefits, salary administration, pay periods, holidays and the civil service system. Please read it carefully.

The following is an acknowledgement statement.

I have received or been directed to the website containing the Employee Handbook which outlines policies, benefits and my responsibilities as an employee of the City and County of San Francisco. I will familiarize myself with the contents of the Handbook. By my signature below, I acknowledge, understand, accept and agree to comply with the information contained in the Employee Handbook.

I understand this Handbook is not intended to cover every situation which may arise during my employment, but is simply a basic guide to the policies and expectations of the City and County of San Francisco.

I understand that the City and County of San Francisco Employee Handbook is not a contract of employment and should not be deemed as such.

Jorge Santiago III
(Print Name)

J. A. Noy III
(Employee Signature)

11-21-14
(Date)

Original in Official Employee Personnel File
Copy to employee

OEPF 1-90 (7/08)



EDWIN M. LEE
MAYOR

Naomi Kelly
Acting City Administrator

General Services Agency

Employee Handbook of the City and County of San Francisco Receipt Acknowledgement

I hereby understand that a copy of the "Employee Handbook of the City and County of San Francisco" can be obtained online from the Department of Human Resources web site at: www.sfgov.org/dhr

Please Print:

Santiago III	Jose	A,
Employee Last name	First Name	Middle Initial

III	11.21.14
Employee Signature	Date

cc: Employee
Personnel File

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EXHIBIT 11

sfrmEnterTime2				
Employee	Roster Code	Date	TRC	Hour
Santiago III, Jose A-55990	DPWUF	11/30/2020	SLL - SICK LEAVE WITHOUT PAY	8
Santiago III, Jose A-55990	DPWUF	12/1/2020	AWL - ABSENCE WITHOUT LEAVE	2
Santiago III, Jose A-55990	DPWUF	12/1/2020	SLL - SICK LEAVE WITHOUT PAY	8
Santiago III, Jose A-55990	DPWUF	12/1/2020	SLL - SICK LEAVE WITHOUT PAY	-8
Santiago III, Jose A-55990	DPWUF	12/1/2020	WKS - Working Hour [at worksite]	6

EXHIBIT 12



Edwin M. Lee, Mayor
Naomi M. Kelly, City Administrator

OFFICE OF THE CITY ADMINISTRATOR



CITYWIDE VEHICLE USE POLICY

Mission Statement

During the past five Fiscal Years, excluding Police, Fire and MUNI, City departments have been involved in 942 vehicle incidents that have resulted in claims against the City. The City has paid over \$2.3 million as a result of those claims. In 2010, the City adopted a Driver's Guide as a first step towards creating a Vehicle Use Policy ("VUP"). To date, many departments have supplemented the Driver's Guide by implementing comprehensive VUPs, while other departments have policies which are strong in some areas, but would benefit from changes in certain elements to take advantage of best practices.

The purpose is to set forth practices for the safe operation of motor vehicles owned or operated by all City departments, excluding sworn (uniformed) staff of SFPD, Sheriff, and SFFD. Departments often have responsibilities that may require the operation of vehicles in areas off public roads; therefore specific addenda will be added by each department on an as-needed basis in order to address unique operational needs. However, this standardized policy will be incorporated into each department's standard operating procedures.

The VUP will serve as a baseline for departments' vehicular operations policies and as an enhancement to the existing 2010 Driver's Guide. As such, the VUP will focus on the operation of licensed motor vehicles primarily operated on public roads.

Policy

The City's VUP outlines the City's commitment to maintaining a safe vehicle fleet, and concern for the safety of people, the protection of property, and minimizing impacts upon the environment by City vehicle operations. VUP focuses on the safe operation of licensed motor vehicles primarily operated on public roads.

The following City VUP, to be administered under the auspices of the Office of the City Administrator, will be implemented by departments through the adoption of a Motor Vehicle Incident Prevention Program, the recommended minimum requirements of which are stated in Appendix A.

Nothing in this citywide VUP shall be interpreted or applied to interfere with, restrict or supersede departmental vehicle use policies or a Memorandum of Understanding ("MOU").

Definitions

Specific definitions for relevant terms shall be clearly defined and communicated to all staff authorized to drive a vehicle. Appendix A includes typical terms and standard definitions that shall be included within each department's Motor Vehicle Incident Prevention Program ("Program").

1 Dr. Carlton B. Goodlett Place, City Hall, Room 362, San Francisco, CA 94102
Telephone (415) 554-4852; Fax (415) 554-4849

Citywide Vehicle Use Policy (October 2014)

Management, Leadership and Administration

Each department's senior management is responsible for demonstrating a commitment to safe vehicle use by allocating sufficient resources to manage its Program. The Program should be an integral component of each department's overall written safety program and managed by a designated staff person. The policy shall include language stating the department's commitment to maintain a safe vehicle fleet, and management's concern for the safety of people, the protection of property, and minimizing impacts upon the environment by City vehicle operations. It is also the responsibility of each department's Program to ensure that all elements of the Program be adhered to by staff as well as adherence to local, state and federal laws and regulations as they relate to vehicle operations.

Written Plan

Within thirty (30) days of the effective date of this Policy, each department must adopt Appendix A: Minimum Requirements of a Written Plan as their Motor Vehicle Incident Prevention Program. Depending on the operational and/or business needs, departments may add to this Program to make it more strict, specific, or stringent, but may not make changes that lessen the effect of the Program.

At a minimum, the Program shall detail a system of responsibility and accountability related to vehicular use which shall be established throughout the organization. The written plan shall document all elements of the Program including the assignment of drivers, performance management, training, incident investigation, discipline (where appropriate), and cost associated with the Program. If requested, this data should be made available in a format that is standard across all departments. Should a citywide coordinator position be staffed, a comprehensive annual report addressing those elements shall be submitted to the City Administrator and other department heads in order to evaluate the performance of the City's Programs. Based upon the annual report, specific recommendations should be made to address shortcomings in an effort to improve overall safe vehicle use.

DMV Review – FOR INFORMATIONAL PURPOSES

Departments shall participate in the California Department of Motor Vehicles [Employer Pull Notice \(EPN\) Program](#) and enlist all new employees whose job description requires possession of a valid California driver's license with no restrictions. The EPN Program was established to provide employers and regulatory agencies with a means of promoting driver safety through the ongoing review of driver records. Departments shall also require that all drivers be obligated to report any change in their DMV license status within twenty-four (24) hours or by the next business day upon such notification.

Training

Each department will provide drivers' training curriculum for all employees required to drive as a condition of their employment. The minimum curriculum is defined in Appendix B. Drivers shall receive training biannually to refresh their knowledge and be informed of new rules, regulations, and best practices, or on an as-needed basis based upon a driver's involvement in an incident. All training records shall be maintained by departments.

Citywide Vehicle Use Policy (October 2014)

Communication

At a minimum:

- Departments shall communicate the requirement that employees sign the Business Use Declaration of the Program (Appendix C).
- Departments shall communicate training opportunities to employees.

Minimize Vehicular and Fuel Use

The City's "Transit First Policy" provides opportunities for employees to use public transit, providing technology for video conferencing, encouraging employees to carpool, and use bicycles whenever practical.

Departments shall work closely with GSA-Fleet when ordering vehicles in order to specify vehicles that will perform efficiently, minimize greenhouse gas emissions, and meet the organizational needs of the department. Requests for specially equipped vehicles shall be reviewed by GSA-Fleet in the context of the department's ability to safely use the vehicles and whether the department has trained staff to use the vehicle.

Consistent with the City's environmental goals and to reduce operating costs, City employees are not allowed to idle an engine for more than five (5) consecutive minutes. For passenger vehicles in general, if an employee is likely to idle one minute or longer, he/she should turn the engine off and restart when he/she is ready to move the vehicle. Diesel vehicles, per California law, must not idle for longer than five (5) minutes. GSA-Fleet can assist departments with exemptions as needed.

For City Hall and nearby departments, and as more vehicle pools become available, departments should utilize City vehicle pools rather than assigning vehicles to individuals. As an example, the City Hall vehicle pool is available for daily use. GSA-Fleet can assist departments with vehicle pools and how to best minimize vehicle usage.

Business Use Policy

Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of City business. (See Appendix D Administrative Code Section 4.11.) Volunteers and contractors are not authorized to use City vehicles. However, after approval by the Department Head or designee, volunteers and contractors deemed to be essential to municipal functions may be allowed as passengers in City vehicles.

Toll citations, parking violation fees, traffic fines, and other citations associated with vehicle use shall be the sole responsibility of the vehicle operator. Each department shall hold accountable employees who accrue tolls, citations, and fines associated with their use of a vehicle unless otherwise specified in a MOU. Employees may seek toll and parking reimbursements in accordance with departmental policies and applicable Controller's Office Travel Reimbursement Guideline.

Citywide Vehicle Use Policy (October 2014)

City vehicles are a resource whose use is limited by law. There is zero tolerance for vandalism of a City vehicle, including but not limited to graffiti, hate crime and defacement committed against City property without permission.

Incident Analysis and Reporting

A standardized incident response for drivers involved in an incident is described in Appendix A and shall be utilized by all departments.

Departments should analyze vehicle incident rates on at least an annual basis. Data from this analysis should be maintained for a period of five (5) years from the date of the incident.

Recognition Program for Employee Safe Driving

Each department should recognize employees who have adhered to the department's Program and who have not been involved in a preventable incident for the past fiscal year. These employees should be recognized in a fair and uniform manner from amongst their peers. Volunteers amongst this select group of exemplary vehicle operators should be utilized to assist drivers within the department who have not been able to achieve this status. Volunteers shall not be a replacement for formal defensive driver's training programs.

Citywide Vehicle Use Policy (October 2014)

Appendix A
Minimum Requirements of a Motor Vehicle Incident Prevention Program
Template

CITY AND COUNTY OF SAN FRANCISCO
[DEPARTMENT]

MOTOR VEHICLE INCIDENT PREVENTION PROGRAM

1.0 POLICY

In order to promote safe driving and to reduce motor vehicle incidents, the [Department] establishes a Motor Vehicle Incident Prevention Program. The Program must include a written plan, definitions, DMV license review, vehicle operator training, communication, incident reporting, recordkeeping, and recognition for safe driving. This Program applies to employees driving [Department] vehicles on City business and it is expected that all employees either operating a City vehicle or who supervise an employee operating a City vehicle shall adhere to this Program.

1.1 DEFINITIONS

Aggressive Driving. Driving in a selfish, bold or pushy manner, without regard for the rights or safety of other users of the roadway.

Collision. An incident in which the first harmful event involves a motor vehicle in motion coming in contact with another vehicle, other property, person(s) or animal(s).

Crash. An incident involving one or more motor vehicles in motion.

Defensive Driving. Driving safely, in spite of the conditions around you and the actions of others.

Department Vehicle. Any vehicle owned, leased, or rented on behalf of the Department.

Distracted Driving. Diversion of the driver's attention from the task of operating a motor vehicle by activities, objects or events inside or outside the vehicle, or by factors such as emotional stress or preoccupation, or the use of mobile electronic devices.

Employee. An individual in the employ of the City and County of San Francisco, with any type of Civil Service status.

GSA-Fleet. Currently located at 1800 Jerrold St. and is responsible for the maintenance of the majority of CCSF's passenger and truck fleet. They can be reached at (415) 550-4600.

Incident. An undesired event that did or is claimed to have resulted in personal harm or property damage, or in any undesirable loss of resources, including moving violations.

Citywide Vehicle Use Policy (October 2014)

Incident Rate. The number of incidents per some unit of measurement or the purpose of assessing safety performance over time or comparing performance with other organizations.

Injury. Physical harm or damage to a person resulting in the marring of appearance, personal discomfort and/or bodily harm, impairment or death.

Motor Vehicle. Any licensed mechanically or electrically powered device (except one designed solely to move by human power), not operated on rails, designed to be operated primarily on public streets and roads, Cargo and/or attachments (trailers, etc.) to a motor vehicle are considered part of that vehicle.

Passenger. A person, other than the driver of the vehicle, who is in or on a motor vehicle.

Preventable Collision. One in which the driver failed to do everything that reasonably could have been done to avoid the collision.

Regular. An employee who is required to drive at least once during their regular daily shift in order to complete their assignment.

Remedial Training. Training required following an incident to upgrade and renew skills and demonstrate proficiency.

Shall. The word is intended to indicate a mandatory practice.

Should. The word is intended to indicate a recommended practice.

Motor Vehicle Incident Prevention Program. Each Department's written policy that defines how vehicles are safely used, trains employees on their safe use, documents and investigates incidents, and maintains data to further safe vehicle use.

2.0 RESPONSIBILITIES

It is the City's expectation that all employees adhere to the Program. Each Department shall establish clearly defined roles for enforcing these Standards. The following tasks should be assigned to specific staff including at a minimum a senior manager, human resources staff, safety staff, or Department fleet manager, front-line supervisors, and vehicle operators, as well as other appropriate staff in order to ensure the Program functions as intended.

- General:
 - Implement the [Department] Motor Vehicle Incident Prevention Program and Vehicle Use Policy
 - Review vehicle use by task to:
 - Maximize the use of alternative transportation in conformance with the City's Transit First Policy and Carpooling resources
 - With the assistance of GSA-Fleet determine suitability of vehicles for designated operations

Citywide Vehicle Use Policy (October 2014)

- Training:
 - Provide for training of personnel under their jurisdiction, consistent with the organization and personnel needs
 - Budget expenditures for motor vehicle incident prevention including training (behind the wheel, etc), classroom training, instructors, etc.
 - Coordinate and track scheduling of employees for Defensive Driving Training.
- Business Use Policy:
 - Have employees review and endorse the Business Use Declaration of the Program and forward the signed copy to the human resources unit
- Incident Prevention:
 - Participate in the CA DMV EPN Program for all new employees assigned to drive a vehicle
 - Review DMV records as needed and inform the employee's supervisor of any changes in an employee's driving status
 - Maintain a database of all authorized drivers' DMV status and incident history for the Department
- Incident Response:
 - Process and review Vehicle/Equipment Incident Reports to determine preventability
 - Investigate, determine cause of motor vehicle incidents, document findings, and implement actions to prevent future incidents
 - Carry out appropriate disciplinary action for violation of safe driving practices
- Incident Analysis and Reporting:
 - Prepare quarterly and annual statistical reports for Department management with recommendations for reducing preventable incidents
 - Include a review of the driver's safety record as a part of the annual performance evaluation

2.10. Employees of [Department] are responsible for the following:

- Maintaining a valid California driver's license and notifying their supervisors immediately if they receive any notification from the Department of Motor Vehicles (DMV) that affects their ability to drive a City vehicle.
- Reviewing and endorsing the Department's Business Use Declaration of the Program.
- Conducting a pre-operation vehicle inspection each time a vehicle is to be operated to ensure equipment operates safely. Report unsafe conditions immediately. GSA-Fleet can provide an inspection check list for departments.
- Using a City vehicle on City business if one is provided.
- Informing supervisor(s) of motor vehicle incidents, including traffic violations and parking violations, before the end of work shifts.
- Reporting motor vehicle incidents by following the procedures in Section 4.0.
- Attending required trainings, including but not limited to Defensive Driving Training, as scheduled.
- Wearing a seat belt when riding in or operating a City vehicle.
- Knowing and obeying State motor vehicle laws and defensive driving rules.
- Prohibiting the transportation of any personal guest in a City vehicle, unless approved by the Department Head and if the guest is essential to municipal functions.

Citywide Vehicle Use Policy (October 2014)

- Not transporting animals in a City vehicle, unless the animal is associated with City business and the vehicle is properly equipped to do so.
- Not using hand-held or hands-free phones or any other hand-held or hands-free mobile technology while driving on City business.
- Not smoking in City vehicles.
- Cooperating with incident investigators and complying with corrective actions, that could lead to progressive discipline for violation of safe driving practices.
- Paying any citations, tolls, and fees in a timely manner or be subject to potential disciplinary procedures.¹

3.0 TRAINING

Employees, supervisors and managers who drive on City business, shall be included in a Defensive Driving Training Program. The training frequency is:

- Drivers
 1. Provide Defensive Driving training for new employees prior to assignment.
 2. Provide refresher Defensive Driving training and evaluation every two (2) years for regular drivers.
 3. Complete refresher training on safe practices annually.
- Drivers who have a motor vehicle incident while driving a City vehicle in the past three (3) months may repeat Defensive Driving training prior to being allowed further use of a vehicle for business use.

See Appendix B for the [Department] minimum training material and requirements.

4.0 INCIDENT REPORTING

All employees must utilize the following procedures when involved in a vehicle incident:

- Call 911 immediately for an injury incident, indicate that you are a City employee, and follow the dispatcher's guidance.
- For a non-injury incident on a street or highway, call (415) 553-0123, indicate that you are a City employee and request that an officer come to the scene to make a collision report. After calling, employees should wait 1 hour for an officer to arrive. All City vehicle incidents on a street or highway require a police report. If the police do not respond, go to the nearest police station and file a report to document the incident facts.
- For an incident off of a street or highway that involves property damage to another party, call (415) 553-0123, indicate that you are a City employee and request that an officer come to the scene to make a collision report. After calling, employees should wait one (1) hour for an officer to arrive. If the police do not respond, go to the nearest police station and file a report to document the incident facts.
- For an incident off of a street or highway that does not involve property damage to another party, comply with the Department's Vehicle/Equipment Incident Reporting Procedures, a police collision report is not required.

¹ Taken from 2010 Driver's Guide

Citywide Vehicle Use Policy (October 2014)

- For non-injury incidents that occur outside of the City and County of San Francisco, contact the local police agency, or Highway Patrol to file a report and document the incident facts.
- Notify your supervisor.
- If there is property damage or personal injury to the public, contact the On Call Investigator in the City Attorney's office at (415) 554-3900.
- Exchange information with other driver(s). Do not discuss fault, guilt, or liability.
- Be courteous and obtain the other driver's name, address, phone number, license plate number, driver's license number, insurance company, and policy number. Obtain the names, addresses and phone numbers of any witnesses. Provide the Notice of Self-Insurance card, or other form of proof of insurance. Per Government Code §990, the City and County of San Francisco is self-insured.
- Take pictures, if possible.
- If you need a tow truck, call the City's contracted towing company. For passenger vehicles or for trucks under 1-ton, call Golden Gate Tow at (415) 826-8866. For trucks of 1-ton or more, call Atlas Towing at (415) 673-4242.
- Complete a Department Vehicle/Equipment Incident Report prior to end of your work shift and make distribution according to your department's instructions. Send one copy of the report to: Office of the City Attorney, Claims Office – 7th Floor, 1390 Market Street (Fox Plaza), San Francisco, CA 94102.
- Substance Abuse Prevention Policy's Post Accident provision – check specific MOU governing test procedures and follow through.

If the City vehicle is damaged, obtain an estimate of repair from Central Shops, or from your department designated source within forty-eight (48) hours. Do not wait for an estimate before completing and sending the Vehicle/Equipment Incident Report.

5.0 License Suspensions and Revocations

When official notification from the California Department of Motor Vehicles is received stating that an employee has a suspended or revoked license, the manager must:

1. Notify the employee of the information received from the EPN Program.
2. Request that employee rectify the situation by obtaining the California Department of Motor Vehicles Driver License/Identification Card Information Report that states their license is valid and provide original to their supervisor. The Report can be obtained at:

Department of Motor Vehicles
1377 Fell Street
San Francisco, CA 94115
(415) 557-1170

3. Supervisor shall send a copy of the report to Department Personnel.

If employee is unable to rectify the situation, then the Department shall immediately remove the employee from driving duties, until driver status is restored. The Department may, depending on employee's work assignment, approve an employee's request for

Citywide Vehicle Use Policy (October 2014)

personal leave, compensatory time off, vacation, or temporary assignment to another job that does not require driving.

If the employee's driver's license is suspended or revoked, the employee will have ninety (90) days to rectify his or her driving status. During this time they will not be allowed to drive a City Vehicle. It will be up to the Department Head or designee whether the employee will be allowed to continue to work during that period to perform their assignment. At the discretion of the Appointing Officer or designee, at the end of ninety (90) days, an employee who has not been able to correct licensure revocation or suspension may be released from employment for failure to meet the minimum requirements of his/her employment.

If employee meets the DMV negligent driver criteria, he/she will not be eligible to drive on City business. A negligent driver is defined as one who has recorded four (4) traffic violation point counts within twelve (12) months, six (6) points within twenty-four (24) months, or eight (8) points within thirty-six (36) months.

6.0 Recordkeeping

Department staff assigned to implement the Program shall maintain motor vehicle incident reports for five (5) years and defensive driving training records for three (3) years.

7.0 Recognition for Safe Driving

Employees who routinely drive on City business will be recognized for their safe driving performance by their managers in a fair and uniform manner.

Citywide Vehicle Use Policy (October 2014)

Appendix B

Vehicular Training Curriculum (Minimum Standards)

[Department]

Minimum Motor Vehicle Incident Prevention Program and Vehicle Use Policy Training Curriculum

The training program shall address requirements for new drivers (e.g., orientation), continuing education of existing drivers, and instances where remedial training shall be required. The training program should include both classroom and behind-the-wheel training.

Consideration should be given to the following topics:

- Defensive driving
- Substance abuse
- Distracted driving (e.g., cell phone use, mobile technology use)
- Aggressive driving (e.g., tailgating)
- Vehicle inspection
- Commodity specific training (e.g., hazardous materials, material handling, cargo securement)
- Safety regulations
- Security procedures
- Emergency equipment
- Post-incident procedures and incident reporting
- Vehicle inspection/maintenance
- The Department's Business Use Declaration of the Program
- Using a City vehicle on City business if one is provided
- Seat belt use
- State motor vehicle laws
- Personal guests and animals in City vehicles
- Prohibition of smoking in city vehicles
- Paying tolls, tickets, and citations

A. Substance Abuse/Drug-Free Workplace

Be aware that, with the exception of MTA, departments employing miscellaneous employees are covered by either the Citywide Substance Abuse Prevention Policy ("SAPP") (<http://sfdhr.org/index.aspx?page=52>) or MOU provisions that closely follow that policy (<http://sfdhr.org/index.aspx?page=54>). Additionally, there are specific classifications who are covered by the Department of Transportation ("DOT") drug testing procedures.

Under such policies, you may not manufacture, distribute, dispense, possess, use or be under the influence of alcohol or illegal drugs in workplace. This prohibition includes prescription drugs which may impair the operator/driver if used improperly (e.g., whether prescribed for the driver/user or not). As stated in such policies, violation of this policy may be grounds for discipline up to and including dismissal.

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If you perform activities in your job that are funded by a federal grant, you must notify your Department Head of any drug convictions for violation of drug laws that took place in the workplace within five (5) days of any such conviction. Employees in certain safety-sensitive positions, or in positions where testing is required by federal law, may be required to submit to periodic drug tests. All employees may be required to submit to drug testing under certain circumstances consistent with federal, state, and local laws and applicable City policies (e.g., Substance Abuse Prevention Policy) and MOUs.

B. Distracted Driving (Consistent with 2010 Drivers Guide and City Administrator's Memo dated 8/21/13, Re: Rules and Guidelines Regarding Use of City Vehicles)

1. Cell phone use is prohibited while operating a motor vehicle. (This includes wireless, hands-free devices.) Do not text while driving; do not use a laptop, notebook, GPS device, or netbook while driving. It is recommended that you limit over-air communications whenever possible. It is recommended that you record a voicemail message for your phone specifically for when you are driving to let others know you will return their call as soon as it is safe to do so.
2. Smoking or eating while operating a vehicle shall be prohibited.
3. The use of head phones for audio entertainment shall be prohibited.
4. Unless authorized by management, non-employees are prohibited from riding within or on vehicles.
5. Unless authorized by management animals are prohibited from riding within or on vehicles.

C. Aggressive Driving

Speeding, failure to observe traffic laws, tailgating, multiple lane changes, and excessive use of horn, verbal arguments with other drivers or pedestrians, and obscene gestures shall be prohibited while operating a vehicle

D. Vehicle Inspection/Maintenance

1. Fueling (taken from 2010 Drivers Guide):

For emergency readiness, always keep your vehicle fuel tank at least $\frac{1}{4}$ full or the minimum set by your department. Emergency and public safety vehicles should be at least $\frac{3}{4}$ full at end of shift.

Unless authorized by your supervisor, use City-operated refueling stations for your city vehicle. City refueling stations shall be used solely for City vehicles. Stations require the use of an asset management refueling key. Each City vehicle has an individually assigned Fuel Key to access any of the City-operated automated self-serve refueling stations. To obtain a new or replacement Fuel Key, contact your departmental fleet coordinator or Central Shops.

Refueling instructions are posted at each station. The basic steps are:

1. Key in the mileage reading + "Enter" at the Sentry post.
2. Insert your refueling key to identify the vehicle.

Citywide Vehicle Use Policy (October 2014)

3. Choose the pump you want to use, and key in the pump number + “Enter”.
4. Then pump gas as at a regular service station.

Before drivers use a CNG (compressed natural gas) vehicle, they must attend a thirty (30) minute safety training course. Contact your departmental fleet coordinator or Central Shops to sign up for training.

1. At a City-operated CNG station, use the asset management key. No smoking or open flame shall be allowed within fifty (50) feet of the fueling area or at any time in the vehicle.
2. Shut the engine off.
3. Set the vehicle’s hand or emergency brake.
4. Remove the protective cap on the vehicle refueling receptacle (if applicable).
5. Remove the fueling hose from the dispenser.
6. Inspect the fueling hose and connector prior to making a connection.
7. Make a connection and ensure the connector is locked in place.
8. Open the refueling valve.
9. Turn the dispenser on.
10. Turn the dispenser off after flow stops registering on it.
11. Shut off the refueling valve.
12. Place the fueling hose back on the dispenser.

2. Car Wash

Under certain circumstances car washes are available to City vehicles, and require a numbered voucher issued by Central Shops. Standard washes include outside wash and dry, interior vacuum and windows. Follow your department’s policy regarding car washes, and adhere to the City’s goal of reducing water usage and car washing expenses by at least fifty percent (50%).

3. Maintenance

A City vehicle receives scheduled preventive maintenance at regular intervals to ensure safe, cost effective operations and to comply with warranty requirements. A preventive maintenance notice is distributed each month in advance of the due date to departmental fleet coordinators and/or drivers. A “Next Service Due” decal is placed on the upper left hand corner of the windshield to assist you in maintaining the City vehicle. For service appointments, contact your departmental fleet coordinator or Central Shops.

You can request service at other times as needed. If you notice warning, service, check engine, oil change lights, leaks, overheating, worn tires, etc., contact your departmental fleet coordinator or Central Shops. Keep your vehicle clean, inside and out.

Citywide Vehicle Use Policy (October 2014)

Appendix C
Business Use Declaration of the Program

[Department]
Motor Vehicle Incident Prevention Program
Driver Acknowledgment

Operating an organizational vehicle is a privilege. All drivers will be responsible and accountable for the following:

1. Possess a valid motor vehicle driver's license issued by the State of California. This license must have the appropriate classification and any required endorsements needed for operating the vehicle(s) assigned to the operator.
2. Be subject to a driver's motor vehicle record check, and if such records show a suspension or revocation of driving privileges, the driver will not be authorized to operate a motor vehicle for the organization.
3. Operate motor vehicles in a safe manner at all times.
4. Comply with all applicable federal, state, and local laws and regulations.
5. Report any mechanical or safety defects immediately.
6. Comply with maintenance schedules as prescribed by the Department.
7. Report moving violations or parking citations to their supervisor by the end of their work shift.
8. Upon notification report changes in driver's licensure status to their supervisor within twenty-four (24) hours or by the next business day to their supervisor.
9. Accurately record and report vehicle mileage in accordance with organization procedures.
10. Participate in required driver safety education and training Programs including an annual review of the Driver's Guide.
11. Require all occupants to use seat belts, child safety seats, booster seats or other age or weight appropriate restraint devices at all times.
12. Pay all tolls, moving/parking violation fines, and fees in a timely manner, unless otherwise specified in a MOU.
13. Not alter in any way without their supervisors' approval vehicles or equipment within a vehicle leased, owned or rented by the organization in any way.
14. Special permission is required to transport children in City vehicles. If you are authorized to transport children in your City vehicle, always transport children under age thirteen (13) in the back seat. Infants in rear-facing infant seats and other children under age thirteen (13) should never be in the front passenger seat facing an airbag.
15. Never operate a computer or other electronic device while driving a motor vehicle.
16. Pull off the road to a safe location prior to making or receiving phone calls or using an electronic device.
17. Do not transport any personal guest in a City vehicle, unless approved by the Department Head and the guest is essential to municipal business. Department vehicles specifically utilized for the purpose of transporting clients of the Department shall be exempt from this requirement.
18. Do not transport animals in a City vehicle, unless the animal is associated with City business and the vehicle is properly equipped to do so.

Citywide Vehicle Use Policy (October 2014)

19. The City reserves the right to install GPS systems in order to complement the City's Asset Management Program. GPS data may be used during the course of vehicular incident or personnel disciplinary investigations.

Operating privileges shall be revoked if:

1. Driver does not adhere to responsibilities listed above.
2. The driver's license is revoked, suspended, withdrawn or denied.
3. Driver refuses to undergo drug or alcohol testing in accordance with organizational policies or as required by applicable state or local jurisdiction.
4. Operating outside the limitations of a restricted license.

I, _____, have read and understand the Business Use Policy established by [Department], I agree to abide by the provisions of this policy. I understand that violation of this policy will result in disciplinary action, up to and including termination of employment.

Driver Signature: _____ Date: _____

Supervisor Signature: _____ Date: _____

Citywide Vehicle Use Policy (October 2014)

Appendix D
Administrative Code Section 4.11

FOR INFORMATIONAL PURPOSES ONLY

SEC. 4.11. USE OF CITY-OWNED VEHICLES.

- (a) Vehicles owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County, shall be used only in the discharge and transaction of municipal business. No officer, employee or authorized volunteer of the City and County shall use any such vehicle without the consent of the head of such department. The head of the department which has jurisdiction over any such vehicle may not assign any such vehicle to any individual officer or employee unless a written request justifying the need for personal assignment is made by the individual officer or employee and approved by the Director of Administrative Services.
- (b) No vehicle owned, leased or rented by the City and County and assigned to, or under the jurisdiction of, any department of the City and County shall be used for transportation to and from an employee's place of residence except as provided below:
- (1) The employee resides in or both resides and works outside of the City and County and is on call for work after his or her normal workday is completed and the nature of the work has required the use of a City and County vehicle after hours on at least five (5) occasions in the preceding twelve (12) month period; or
 - (2) The employee resides in or both resides and works outside of the City and County and must leave his or her residence prior to 8:00 a.m. on City and County business away from his or her normal place of work; or
 - (3) The employee resides in or both resides and works outside of the City and County and would return to his or her normal place of work from an appointment on City and County business after 6:00 p.m. or on a weekend; or
 - (4) The employee is a member of the San Francisco Police Department or San Francisco Sheriff's Department, or an employee of the San Francisco Water Department, San Francisco Department of Public Works, San Francisco Department of Emergency Services, San Francisco Office of Citizen Complaints or San Francisco District Attorney's Office, and has the prior written permission of the department head to use a vehicle equipped with emergency equipment for such purpose, subject to such restrictions and regulations as the Chief of Police, Sheriff, Director of Emergency Services, Director of the Office of Citizen Complaints or District Attorney may provide for the respective departments. The departments shall keep detailed records of all vehicles used pursuant to this paragraph; said records shall be open to inspection by the Office of the Mayor and the Board of Supervisors; and provided further that the number of vehicles so exempted shall not exceed:

San Francisco Water Department	42
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San Francisco Police Department	33
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Citywide Vehicle Use Policy (October 2014)

San Francisco Sheriff's Department	5
San Francisco Department of Emergency Services	2
San Francisco Department of Public Works	17
San Francisco Office of Citizen Complaints	4
San Francisco District Attorney's Office	8

- (5) The employee is a forensic pathologist employed by the Office of the Medical Examiner and has prior written permission of the Medical Examiner to use a City and County vehicle and is on call before or after normal work hours in order to respond to and investigate death scenes. The Medical Examiner shall keep detailed records of all vehicles used pursuant to this subsection; said records shall be open to inspection by the Director of Administrative Services and the Board of Supervisors; and provided further that the number of vehicles so exempted shall not exceed two vehicles; or
- (6) The employee is a resident of the City and County of San Francisco and is driving the vehicle to and from the employee's place of residence solely for the purpose of garaging the vehicle at his or her place of residence during nonworking hours, with the approval by resolution of the Board of Supervisors, upon the recommendation of the Director of Administrative Services, where the head of the department which has jurisdiction over such vehicle finds that the public interest will be best served by permitting the employee to take the vehicle home, rather than require the City to garage the vehicle.
- (c) **Penalty.** Any employee violating the provisions of this Section shall pay to the City and County an amount equal to three times the City and County's mileage reimbursement rate times the number of miles driven in violation thereof.
- (d) Except as otherwise provided by ordinance, an authorized volunteer, while operating a motor vehicle owned by the City and County pursuant to authorization by the head of the department to which said vehicle is assigned or which has jurisdiction over said vehicle, shall be deemed to be an employee of the City and County solely for purposes of California Vehicle Code Section 17001 and Division 3.6 of Title 1 of the Government Code of the State of California, and for no other purpose; provided, however, that nothing herein contained shall be deemed to permit the authorization to operate a motor vehicle owned, leased or rented by the City and County contrary to the provisions of the Vehicle Code of the State of California.

(Amended by Ord. 562-79, App. 11/16/79; Ord. 358-93, App. 11/15/93; Ord. 278-96, App. 7/3/96; Ord. 410-97, App. 10/31/97; Ord. 35-04, File No. 031934, App. 3/19/2004)

EXHIBIT 13

City and County of San Francisco

London N. Breed, Mayor
Naomi M. Kelly, City Administrator

General Services Agency

Human Resources Administration
1155 Market Street, 4th Floor
San Francisco, CA 94103 - 1523
Main: (415) 554-6000
Fax1: (415) 554-6025
Fax2: (415) 554-6042

Via Email and Hand Delivery

[REDACTED]
August 27, 2019

Jose Santiago
[REDACTED]

Re: Notice of Disciplinary Suspension Date

Dear Mr. Santiago:

In accordance with the attached *Skelly* Decision approved by Mohammed Nuru, Director, San Francisco Public Works, please be advised that you are being suspended without pay for 1 work day. The date of your suspension will be as follows:

- **Wednesday, September 4, 2019**

You are not permitted to return to work during the suspension nor are you permitted to work any overtime during the pay period in which the suspension is served.

Should you have any questions, please feel free to contact Jason Jimenez, Senior Employee and Labor Relations Analyst at 415-695-2033.

Sincerely,

A handwritten signature in blue ink, appearing to read "Svetlana Vaksberg", with a long horizontal line extending to the right.

Svetlana Vaksberg
Employee and Labor Relations Division Director

Enclosure: *Skelly* Decision for a 1 Day Suspension

cc: Carla Short, Superintendent, Bureau of Urban Forestry,
San Francisco Public Works
Jason Jimenez, Senior Employee and Labor Relations Analyst,
General Services Agency-Human Resources
Official Employee Personnel File – Santiago, Jose

City and County of San Francisco



London N. Breed, Mayor
Naomi M. Kelly, City Administrator

General Services Agency

Human Resources Administration
 1155 Market Street, 4th Floor
 San Francisco, CA 94103 - 1523
 Main: (415) 554-6000
 Fax1: (415) 554-6025
 Fax2: (415) 554-6042

MEMORANDUM

TO: Mohammed Nuru, Director, San Francisco Public Works

THROUGH: Larry Stringer, Deputy Director for Operations, San Francisco Public Works *LS*

FROM: Lawlun Leung, Senior Employee and Labor Relations Analyst *LL*

DATE: August 15, 2019

SUBJECT: Jose Santiago, 3417 Gardener
Skelly Decision Regarding Recommendation for a One (1) – Day Suspension

On July 24, 2019 a *Skelly* hearing was held for Jose Santiago, class 3417 Gardener, employed with the San Francisco Public Works, Bureau of Urban Forestry (Department). The purpose of the hearing was to provide Mr. Santiago the opportunity to respond to the following charges:

1. Violation of Attendance and Punctuality Policy;
2. Continued Excessive Absenteeism; and
3. Continued Pattern of Sick Leave Abuse

At issue is whether there is sufficient reason to uphold the Department's recommendation for a one (1) day suspension due to the above-listed charges. After reviewing the information provided by the Department and Mr. Santiago, it is my recommendation to uphold the charges and the one-day suspension.

APPROVED: 

MOHAMMED NURU
 DIRECTOR, SAN FRANCISCO PUBLIC WORKS

Skelly Decision Re: Jose Santiago
Page 2 of 4

BACKGROUND

On August 31, 2013, San Francisco Public Works (Department) hired Jose Santiago to a 3417 Gardener, Permanent Civil Service (PCS) position.

On July 16, 2018, Mr. Santiago was placed on a sick leave restriction (SLR) for excessive sick leave use. In October 2018, he received a written counseling for not following the SLR because he did not submit a doctor's note for his sick leave use. In February 2019, Mr. Santiago received a Reprimand for not following the SLR.

From the July 16, 2018 SLR to May 10, 2019, he called in sick on 61 days. The absences were not pre-approved. Of the 61 days, 59 days were taken before or after your weekend, vacation, or holiday. He called in sick 42% of the time and only worked 58% of the time.

He continues to have excessive absenteeism and a pattern of sick leave abuse.

SKELLY HEARING

On July 24, 2019, a *Skelly* hearing was held at 2323 Cesar Chavez Street, Blue Trailer Conference Room. Present at the *Skelly* hearing were Mr. Santiago; Carla Short, Superintendent Bureau of Urban Forestry; Nicholas Crawford, Assistant Superintendent Bureau of Urban Forestry; and Jason Jimenez, Senior Employee and Labor Relations Analyst, General Services Agency. Mr. Santiago did not have a representative present. I, Lawlun Leung, Senior Employee and Labor Relations Analyst, General Services Agency, served as the *Skelly* hearing officer.

At the *Skelly* hearing, Mr. Santiago was given the opportunity to respond to the Department's Notice of Proposed Disciplinary Action.

The *Skelly* process is an opportunity to obtain information that can confirm, exonerate or mitigate the conduct of an employee. This information may affect the imposition of discipline or the type of discipline. My role as the *Skelly* Hearing Officer is to be an impartial, non-involved reviewer of the facts involved in a disciplinary matter. My role is not to substitute judgment with respect to the discipline to be imposed, but rather to reach a conclusion as to whether, based upon the record, there are reasonable grounds to proceed with the proposed discipline, or whether it should be modified or revoked.

My review and analysis of the information provided by all parties is as follows:

FINDINGS

Charge 2: Continued Excessive Absenteeism

The Department's evidence showed that Mr. Santiago called in sick 61 days from July 16, 2018 to May 10, 2019. Mr. Santiago argued that the Department's calculation of 61 days was inaccurate. He believed that Human Resources had approved one leave as Family Medical Leave Act (FMLA) protected and later approved leave as Reasonable Accommodation from April through July of 2019. I requested that he provide me evidence that would show the absences were approved by Human Resources.

Skelly Decision Re: Jose Santiago
Page 3 of 4

On July 25, 2019, Mr. Santiago sent me copies of correspondence between himself and Human Resources and the Department related to his absences from April through July 2019. Of note was a letter he received from Mr. Jimenez dated July 3, 2019 titled, "Unapproved Leave and Notice to Return to Work." (**Exhibit 1**)

The letter confirmed Mr. Santiago's claim that the Department approved his time as a Reasonable Accommodation, "From April 8, 2019 through June 29, 2019, you were off work on a continuous leave. Since you did not work the required 1250 hours in a consecutive 12 months, you did not qualify for Family Medical Leave Act and California Family Rights Act leave protections. The Department approved your leave as a reasonable accommodation." During this time period, Mr. Santiago was absent from work a total of 25 days.

Since the Department approved this time as Reasonable Accommodation those dates should not have been considered as evidence to support the proposed discipline. Deducting the 25 days from the Department's original 61 days, results in a total of 36 absences (or 288 hours) in the span of 10 months.

Per the Department's practice, "excessive absences" is defined as hours used in excess of 88 sick leave hours within a rolling 12-month period. With 288 hours of sick leave used, Mr. Santiago absences were still excessive.

Therefore, the Charge of Continued Excessive Absences is SUSTAINED.

Charges 1 and 3: Violation of Attendance and Punctuality Policy and Continued Pattern of Sick Leave Abuse

Mr. Santiago challenged the validity of the Sick Leave Restriction that the Department placed him on in July of 2018. He asserted that there were dates in which he worked, but the Department marked him as absent. Mr. Santiago said that he brought this issue to the Department's attention but it was left unresolved. He also claimed that his sick leave hours were "disappearing" from his paystub and thus reflected a smaller amount than it should have been.

When asked for the Department response, Ms. Short said that she gave Mr. Santiago time to provide proof and delayed issuing the February 2019 Reprimand for failing to provide doctor's notes as required by the Sick Leave Restriction. She never received documentation from Mr. Santiago, so she proceeded with the reprimand. Ms. Short added that she had requested a review of Mr. Santiago's leave balance by the GSA's Payroll unit and they reported his leave balance as accurate.

I requested that Mr. Santiago send me any evidence he had that would show the Department's attendance records as inaccurate.

After the *Skelly* meeting, Mr. Santiago sent me copies of text messages from July 17, 2018 that were originally sent to Ms. Short's attention. (**Exhibit 2**) In summary, Mr. Santiago provided Ms. Short seven dates that he was concerned about which were:

Skelly Decision Re: Jose Santiago
Page 4 of 4

- July 17, 2017
- September 22, 2017
- October 20, 2017
- January 4, 2018
- January 12, 2018
- May 24, 2018
- June 14, 2018

The relevant time period from the Department's *Skelly* notice is July 16, 2018 to May 10, 2019. Since the disputed dates were over a year prior, the dates were not relevant to the hearing.

Mr. Santiago explained that he was absent from work because he felt work was a stressful environment and that he was dealing with his own personal health issues. However, Mr. Santiago failed to substantiate why his absences occurred adjacent to his weekends, vacations, or holidays. Mr. Santiago's excessive and pattern absences demonstrate that he continues to engage in sick leave abuse and is a violation of the City's Attendance and Punctuality Policy.

Therefore, all Charges are SUSTAINED.

RECOMMENDATION

After consideration of the information provided by the Department and Mr. Santiago, I uphold the Department's recommendation that Mr. Foster receive a one (1) day suspension.

EXHIBITS

1. July 3, 2019, Unapproved Leave and Notice to Return to Work
2. Copies of Text Messages from Mr. Santiago to Ms. Short

EXHIBIT 1

City and County of San Francisco

London N. Breed, Mayor
Naomi M. Kelly, City Administrator

General Services Agency

Human Resources Administration
1155 Market Street, 4th Floor
San Francisco, CA 94103-0903
Main: (415) 554-6000
Fax1: (415) 554-6025
Fax2: (415) 554-4827

Via U.S. Mail & E-mail

July 3, 2019

Jose Santiago III
[REDACTED]

Re: Unapproved Leave and Notice to Return to Work

Dear Mr. Santiago:

This serves as an update on your leave status and return to work with the City and County of San Francisco (City) and San Francisco Public Works (Department). You are employed as a Permanent Civil Service (PCS) 3417 Gardener with the Bureau of Urban Forestry (BUF).

We are concerned about your absence and hope your recovery is progressing well. At the same time, we need to meet the Department's responsibilities in serving the public and make sure the job for which you are responsible gets done.

I. **Continuous Long Term Leave**

From April 8, 2019 through June 29, 2019, you were off work on a continuous leave. Since you did not work the required 1250 hours in a consecutive 12 months, you did not qualify for Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA) leave protections. The Department approved your leave as a reasonable accommodation.

In a Work Status Report, dated April 29, 2019, your healthcare provider, Dr. Kenneth Ping Cuang M.D., prescribed you to be off work from April 29, 2019 through June 29, 2019. Dr. Cuang also prescribed that you are able to return to work at full capacity on July 1, 2019. The Department anticipated your return to work on July 1, 2019.

To date, you have not reported to work and have not provided any additional documentation from your healthcare provider authorizing you to be off work. Please be advised that your absence is considered as unapproved leave and will be marked absent without leave (AWOL).

Santiago, Jose
Page 2 of 3

II. Automatic Resignation

Please be advised that employees who do not receive an approved leave extension, or who do not return to work when they are expected may be subject to disciplinary action or automatic resignation.

Please be advised that pursuant to Civil Service Commission Rule 120.1.6 states:

Except as otherwise provided in these Rules, leave granted for the period stated on the prescribed form may be extended or abridged only with the approval of the appointing officer or designee. An employee who does not return to work on the approved date shall be deemed as away without official leave and shall be subject to automatic resignation as provided elsewhere in these Rules.

Employees who are absent from work for more than five (5) days are considered to have abandoned their job and the Department will move forward with processing an automatic resignation. Please be advised that Civil Service Commission Rule 122.11.1 states in relevant part:

Absence from duty without proper authorization in excess of five (5) continuous working days shall constitute abandonment of the position and shall be reported to the Department of Human Resources and recorded as an automatic resignation.

It is important that you return to work immediately or provide an updated healthcare provider information. You can contact me at 415-695-2033 or jason.jimenez@sfgov.org immediately. If I do not hear from you by close of business on Wednesday, July 10, 2019, the Department will proceed with processing an automatic resignation from your employment.

V. Other Resources

If you are unable to return to City employment, you may resign or, if you qualify, request a disability, service, or vested retirement. If you would like to pursue one of these options, please consult with the San Francisco Employees' Retirement System located at 1145 Market Street, 5th Floor, San Francisco, CA 94103, or by calling (415) 487-7000. You may request additional information or schedule an appointment with a Benefits Analyst.

Sincerely,



Jason Jimenez
Senior Employee and Labor Relations Analyst

cc: Carla Short, Superintendent, BUF, San Francisco Public Works
Clarence Robinson, Area Supervisor, BUF, San Francisco Public Works

Santiago, Jose
Page 3 of 3

EXHIBIT 2

Sprint LTE

10:52 AM



mail.google.com



'carla....

**Jose A. Santiago III**

to Carla.Short

Jul 18, 2018 [Details](#)

Here are the dates I'm concerned about.

•07/17/2017

•09/22/2017

•10/20/2017

•01/04/2018

•01/12/2018

•05/24/2018

•06/14/2018

I was also wondering if you knew that on 07/28/2017 I filed a discrimination claim with California Department of fair employment and housing? Just a FYI in case you didn't know.

Thank You

**Short, Carla (DPW)**

Ok, I'll pull the sign in sheets for these dates. Thank you for the FYI. I was not aware.



Sprint LTE

10:54 AM



mail.google.com



'carla....



Hi Jose,

I can't see the phone records, that you're referring to in the email.

The list below is from payroll downtown, not from CMMS.

If there is a discrepancy, please bring me the records that you are referring to that demonstrates this and we will review.

Thanks,
Carla



Sprint LTE

10:52 AM



mail.google.com



'carla....



Thank You



Short, Carla (DPW)

Ok, I'll pull the sign in sheets for these dates. Thank you for the FYI. I was not aware.



Jose A. Santiago III

to me

Oct 31, 2018 [Details](#)



Thank You

Begin forwarded message:

From: "Jose A. Santiago III"

[<prjas3@gmail.com>](mailto:prjas3@gmail.com)

Date: July 18, 2018 at 12:33:07 PM PDT

To: Carla.Short@sfdpw.org

Subject: Dates for sp



'carla....



Phone records Inbox



Jose A. Santiago III



Short, Carla (DPW)

Ok, thanks for sending. I think we should sit down and review. Can you come to my office tomorrow?



Jose A. Santiago III

Ok no problem for some reason the 1st email I sent they disappeared. I will be there tomorrow!



Jose A. Santiago III

to me

Oct 31, 2018 [Details](#)



Sprint LTE

10:54 AM



mail.google.com



'carla....



Sick leave restriction Inbox



Jose A. Santiago III

to Carla.Short

Jul 17, 2018 [Details](#)



I have been falsely put on sick leave restriction. D'Jayda Durden and Clarence Robinson both have been told that as of lately my time doesn't seem accurate and that I'am getting suspicious. Included here I have pictures of the days the system has me SP and my phone records that show different. I also attached a picture of employee Johnny Silas that today the system has as SP on 07/17/18 and he is here present at work. The discrimination that I constantly sustain at the Department of Public Works is unfair and in direct violation of California employment and fair housing. I need this to be fixed ASAP and taken off my file.

3 attachments



Sprint LTE

10:54 AM



mail.google.com



'carla....



Hi Jose,

I can't see the phone records, that you're referring to in the email.

The list below is from payroll downtown, not from CMMS.

If there is a discrepancy, please bring me the records that you are referring to that demonstrates this and we will review.

Thanks,
Carla



Sprint LTE

10:07 AM



mail.google.com



'carla....



Short, Carla (DPW)

Ok, I'll pull the sign in sheets for these dates. Thank you for the FYI. I was not aware.



Jose A. Santiago III

to me

Oct 31, 2018 [Details](#)



Thank You

Begin forwarded message:

From: "Jose A. Santiago III"

[<prjas3@gmail.com>](mailto:prjas3@gmail.com)

Date: July 18, 2018 at 12:33:07 PM PDT

To: Carla.Short@sfdpw.org

Subject: Dates for sp



Sprint LTE

10:54 AM



mail.google.com



'carla....



IMG_0212.jpg · Print



Short, Carla (DPW)

to me

Jul 17, 2018 [Details](#)



This message has been modified to fit your screen. Tap here to show original.

Hi Jose,

I can't see the phone records, that you're referring to in the email.

The list below is from payroll downtown, not from CMMS.



EXHIBIT 14





Carla Short, Interim Director | Director's Office

carla.short@sfdpw.org | T. 628.271.3078 | 49 South Van Ness Ave. Suite 1600, San Francisco, CA 94103

Via Hand Delivery

October 29, 2021

Jose Santiago



Re: Notice of Dismissal from Employment

Dear Mr. Santiago:

By receipt of this letter, you are notified that effective close of business October 29, 2021, you are dismissed from your employment as a permanent civil service (PCS) 3417 Gardener with San Francisco Public Works, Bureau of Urban Forestry (BUF).

The grounds for dismissal are as follows:

1. Dishonesty.
2. Misuse of City Time and Resources.
3. Violation of Department Policy and Procedures (Leaving Assigned Work Area).
4. Violation of City's City Vehicles Policy; Citywide Vehicle Use Policy; and Department's City Vehicle Use Policy.
5. Violation of City's Attendance and Punctuality Policy.

As you are aware, on August 31, 2021, a *Skelly* meeting was held. You did not attend the *Skelly* meeting but your union representative, Theresa Foglio-Ramirez attended the meeting. The *Skelly* Officer agreed to give you until September 7, 2021 to provide a written response. On September 7, 2021, you provided a written response.

Enclosed is a copy of the *Skelly* officer's recommendation that you be dismissed from your employment. After carefully reviewing all the information and materials in this matter, I concur with the *Skelly* officer's recommendation.

Jose Santiago
Notice of Dismissal from Employment
Page 2 of 2

Attached please find the following:

1. Separation Report stating that you are being dismissed from your PCS 3417 Gardener;
2. Notice of Future Employment Restrictions;
3. *Skelly* Recommendation; and
4. Employee Assistance Program (EAP) brochure.

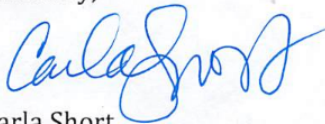
Any accrued vacation pay you may have remaining will be paid out to you within 30 days of the last day of your employment.

If you have health benefits questions, please call Health Services at (628) 652-4700. If you have San Francisco Employees' Retirement System (SFERS) or Deferred Compensation questions, please call SFERS Member Services at (415) 487-7000.

The City's Employee Assistance Program (EAP) is available to former employees, up to 30 days past the former employee's separation date. Attached is the EAP brochure.

If you have any questions, you can contact Jason Jimenez, Senior Employee and Labor Relations Analyst, City Administrator Human Resources (CAHR), at (415) 695-2033.

Sincerely,



Carla Short
Interim Director, San Francisco Public Works

Enclosures: A/S

cc: DiJaida Durden, Deputy Director for Operations
Nicholas Crawford, Acting Superintendent, Bureau of Urban Forestry
Jason Jimenez, Senior Employee and Labor Relations Analyst
Personnel File

City and County of San Francisco
Carol Isen
Human Resources Director



Department of Human Resources
Connecting People with Purpose
www.sfdhr.org

SEPARATION REPORT

INSTRUCTIONS: Please complete the Separation Report to:

1. Document internal departmental processes. Please do not send to DHR.
2. Document that the employee separation is not a complete separation from City service, Separation Report must be completed by the sending department and submitted to the receiving department to be attached to the AP ESR.
3. To process a layoff. Please send to the DHR layoff coordinator.
4. To administer a settlement agreement involving the separation of the employee-submit documentation to your Client Services Representative. (Reference TER_RZA)*

Date of Request: 10/26/2021

Department Contact: Jimmy S. Wong Email: jimmy.s.wong@sfgov.org Phone: (415) 554-6041

SECTION I: PERSONAL AND JOB INFORMATION

Name (Last, First, M.I.): Santiago III, Jose A. Employee I.D.: [REDACTED]

Job Code: 3417 Job Title: Gardener

Position Number: 01006769 Hourly Rate: \$39.6125 Step: 5 Effective Date: 10/30/2021

Empl. Class: PCS Work Schedule: Full-Time

Is the employee serving a probationary period at the time of the separation? Yes No

Is this a complete separation from City and County Service? Yes No

If no, continuing in:

Department Code: (Select One) Status: _____ Job Code: _____ Effective Date: _____

Is employee granted leave pursuant to Civil Service Rule 120.31? Yes No

If no, is employee a transfer? No Yes, type of Transfer: (Select One)

SECTION II: SEPARATION INFORMATION

Resignation

Satisfactory Services (TER_RSS)

Unsatisfactory Services (TER_RUS)
(Form DHR 1-13 must be on file)

By the appointee: I hereby freely and voluntarily resign from the above position. I request approval of this resignation as of the effective date with the full understanding that once approved, I may acquire another position in this class only as provided in the rules of the Civil Service Commission (see employee copy and CSC Rules 114&119).

Employee Signature

Date

Lay-off

Involuntary Leave (PCS_LIL)

Elective Involuntary Leave (PCS_EIL)

Involuntary Lay-off (PCS_LIO)

Voluntary Lay-off (PCS_LVO)

(PV & EX Only): (Select One)

Reason for lay-off: (Select One)

Employee acknowledges receipt of the DHR information leaflet.

Employee Signature

Date

SEPARATION REPORT

DEPARTMENT USE ONLY

Termination

Settlement Agreement (TER_RZA)
*(Separation Report and Settlement Agreement must be forwarded to Client Services Rep.)

Release from appointment:

Release from probation:

Dismissal:

Terminated for cause (TFC) (TPV,NCS, & Exempts only)

Automatic Resignation (ARS)

Never Reported to Work (DSH)

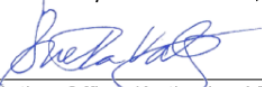
Death of an employee (DEA)

Other (Specify): _____

Retirement:

DEPARTMENT CERTIFICATION

The Appointing Officer/Authorized Designee named below hereby certifies that the information provided on this Separation Report is accurate, complete, and in compliance with applicable CCSF rules and policies.

	415-554-6000
Appointing Officer/Authorized Designee Signature	Telephone

Name/Title: Svetlana Vaksberg, Employee and Labor Relations Division Director

Department Number: 90 Department Name: San Francisco Public Works

Personnel File Forwarded? Yes No

Forwarded to:
Department: _____ Contact: _____

DHR USE ONLY

Action Pending? Yes No

Analyst Name Telephone

SR Ref Number: _____ Holdover Canvass: _____

Reference Number used for layoff actions: _____

City and County of San Francisco
 Carol Isen
 Human Resources Director



Department of Human Resources
 Connecting People with Purpose
 www.sfdhr.org

NOTICE OF FUTURE EMPLOYMENT RESTRICTIONS

Jose Santiago
 Employee Name

 Street Address

 City State Zip

 Mailing Date
 San Francisco Public Works/BUF
 Department/Division
 PCS
 Type of Appointment

This notice is to inform you that a future employment restriction is being imposed along with your separation action, or with the action of automatic resignation, reported to the Department of Human Resources separating you from your position in Class 3417, Title Gardener, effective 10/30/2021, for the reasons outlined in the attached document(s).

The items checked below are the restrictions made by the department on your future employability for positions covered by the San Francisco civil service system:

<input type="checkbox"/> No Restrictions on Employment	<input checked="" type="checkbox"/> Citywide	<input type="checkbox"/> Department(s): _____
<input checked="" type="checkbox"/> Permanent Restriction	<input type="checkbox"/> DOT/SAPP	<input type="checkbox"/> Job Code(s): _____
<input type="checkbox"/> Conditional Restriction	<input type="checkbox"/> Cancel Current Examination & Eligibility Status	

Conditional restrictions may be lifted by proving you have satisfactorily met the following requirements:

Requirement Type	Description:	Level of Measurement:	Measurement Value:
CER: Certification			
EXP: Work Experience			
LIC: Licensure			
SAP: Substance Abuse Program			
Other:			

In addition to the noted conditional restrictions, you are also restricted from specific attributes of a job class and/or department until you satisfactorily prove you meet the requirements to lift the restriction(s) as noted below:


Future Employment Restrictions	Description:	Level of Measurement:	Measurement Value:
001: Vehicle/Heavy Machinery			
002: Vulnerable Populations			
003: Face to Face Contact w/Public			
004: Contact w/Animals			
005: Signing/Approving City Docs			
006: Financial Instruments			
007: Confidential/Privileged Information			
008: IT Infrastructure			
009: Means of Entry to Living Spaces			
010: Pharmaceutical/Drug Inventory			
011: CDC Defined Toxins			
012: Weapons/Explosives			
013: City Property Valued > \$100			

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014: Electronic Voting Systems		
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You may request a hearing before the Civil Service Commission on your future employability with the City and County of San Francisco. The Civil Service Commission has the authority to remove restrictions or impose additional restrictions on your future employability. You may request a hearing for review of any restrictions on your future employability with the Civil Service Commission within 20 calendar days of the mailing date of this notice or from the date of separation, whichever is later. The request must be submitted in writing to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102 by 11/19/2021. Requests received after this date will not be considered and your right to a hearing will be forfeited. If you do not request a hearing or file an appeal, the Human Resources Director will take final administrative action to confirm the restriction(s) in effect on the date of separation (Note: Future Employment Restriction(s) effective immediately).

If this matter is subject to the Code of Civil Procedures (CCP) Section 1094.5, the time by which judicial review must be sought is set forth in CCP Section 1094.6. (SEE BELOW)

List #: <u>060208</u>	Rank #: <u>4</u>	<input type="checkbox"/> Pending	<input checked="" type="checkbox"/> Final	Status of Action
DSW: [REDACTED]				
Emp Organization: <u>San Francisco Public Works</u>		SIGNATURE		
METHOD OF SERVICE:		<u>Svetlana Vaksberg</u>		
<input checked="" type="checkbox"/> Hand Delivered		NAME		
<input type="checkbox"/> Certified Mail		<u>Employee & Labor Relations Div. Director, CAHR</u>		
		TITLE		

INFORMATION FOR FORMER EMPLOYEE FOLLOWING SEPARATION

1. This document serves as an official notice of future employment restrictions imposed with the Notice of Automatic Resignation from Employment to the former employee or with a Separation Action that is subject to the provisions of a collective bargaining agreement, to the Civil Service Commission, and the Department of Human Resources.
2. A separated employee may request a hearing before the Civil Service Commission only for review of any restrictions on their future employability with the City and County of San Francisco.
3. Such appeals or requests for hearing must be in writing and received from the employee or the employee's representative by the date specified on this notice, or within twenty (20) calendar days from the mailing date of this notice, or the effective date of the separation, whichever is later. The request must be submitted to the Executive Officer, Civil Service Commission, 25 Van Ness Avenue, Suite 720, San Francisco, CA 94102.
4. An employee who requests a hearing within the time limits is entitled to:
 - a. Representation by an attorney or authorized representative of the employee's own choice.
 - b. Notification of date, time, and place of hearing at a reasonable time in advance.
 - c. Inspection by the employee's attorney or authorized representative of those records and materials on file with the Civil Service Commission which relate to the restrictions on future employability.
5. Any interested party may request that the hearing be continued or postponed.
6. The decision of the Civil Service Commission is final and not subject to reconsideration.
7. In the absence of a timely request for a hearing as provided above, no later request for a hearing will be considered.

DEPARTMENT INSTRUCTIONS FOR COMPLETING FORM DHR 1-13E

- Refer to related provisions of appropriate collective bargaining agreements
- Refer to CSC Rule 122, Article VI: Absence From Duty Without Leave (Misc)
- Refer to CSC Rule 222, Article IV: Absence From Duty Without Leave (UPPD)
- Refer to CSC Rule 322, Article VI: Absence From Duty Without Leave (UPFD)

Use this form when:

The appointing officer or Human Resources Director has taken action of automatic resignation on an employee on the basis of abandonment of position, regardless of employment status; and/or the separation action is subject to the provisions of the collective bargaining agreement.

Complete the information on the top section of the form: Name, Address, City, State, Zip, Mailing Date, Department/Division, Type of Appointment, Type of Separation.

In the first paragraph of the notice, enter the Class Number, Title and effective date of the separation.

If there are no restrictions imposed with the separation, the box “*no restrictions on future employability*,” must be checked to indicate this action, and attach applicable documents, e.g., a settlement agreement.

Indicate the restrictions on future employability by checking the appropriate boxes. If the restrictions are conditional, you must complete the section on the requirements needed to lift the restrictions, including the level of measurement (entry, journey, etc.) and values (length of time in months, years, etc.) of the requirements.

If Future Employment Restrictions are included, complete that section including details on the requirements needed to lift the restrictions. Attach a copy of all separation-related letters and supporting documentation. Documentation must provide justification and the rationale for the imposed restrictions.

The separated employee may request a hearing for review of any restrictions on future employability. Indicate the date by which the appeal must be filed in the space provided. Consistent with the separation action, count twenty (20), or thirty (30), calendar days from the mailing date of the notice or the effective date of release, whichever is applicable. When counting the days, count the day after the mailing date as the first day.

Complete the information on the bottom section of the form: Rank, List#, DSW#, and Employee Organization. Check the method of service used and tracking # if applicable.

Indicate status of action:

- Select “Pending” if Notice of Future Employment Restrictions is subject to the provisions of a collective bargaining agreement
- Select “Final” if the status is not subject to the provisions of a collective bargaining agreement, or to update a previously reported “Pending” action.

Type in the name and title of the appointing officer. The appointing officer must sign the form.

Send the *original* Notice of Future Employment Restrictions along with the *original* Notice of Automatic Resignation from Employment (DHR 1-48a) to the employee. Make two sets of copies of the notices; send one set of *copy* to DHR - Client Services along with the *original* Separation Report (DHR Form 1-67); and retain the other set of *copy* in the Official Employee Personnel Folder.

Reminder: Imposed restrictions on future employability are effective immediately, and must be reported to DHR – Client Services concurrent with the departmental notice to separate the employee. This will enable timely and appropriate updates to DHR systems and other dependent programs, such as exams, adoptions of eligible lists, citywide recruitments, and certifications/referrals.

DHR 1-13e (Revised 10-2017)

City & County of San Francisco
London N. Breed, Mayor



Office of the City Administrator
Carmen Chu, City Administrator

SKELLY MEETING DECISION

TO: Carla Short, Interim Public Works Director

THROUGH: Dijaida Durden, Deputy Director of Operations *2.0.*
San Francisco Public Works

FROM: Breonna Santiago, Human Resources Analyst, City Administrator Human Resources


DATE: October 22, 2021

SUBJECT: Jose A. Santiago III, PCS 3417 Gardener,
Skelly Decision Regarding Recommendation for Dismissal from Employment

On August 31, 2021 a *Skelly* meeting was held for Jose A. Santiago III PCS 3417 Gardener, employed with the San Francisco Public Works, Bureau of Urban Forestry (BUF). The purpose of the meeting was to provide Mr. Santiago the opportunity to respond to the following charges:

1. Dishonesty;
2. Misuse of City Time and Resources;
3. Violation of Department Policy and Procedures (Leaving Assigned Work Area);
4. Violation of City's City Vehicles Policy; Citywide Vehicle Use Policy; and Department's City Vehicle Use Policy; and
5. Violation of City's Attendance and Punctuality Policy.

At issue is whether there is sufficient reason to uphold the Department's recommendation for Dismissal from employment with City and County of San Francisco due to the above-listed charges. After reviewing the information provided by the Department and Mr. Santiago it is my recommendation to uphold the charges and the proposed dismissal from employment.

APPROVED: 
Carla Short
Interim Director, SF Public Works

BACKGROUND

On August 31, 2013, the Department hired Mr. Santiago to a 3417 Gardener, PCS position. Mr. Santiago is assigned to Bureau of Urban Forestry (BUF) to perform maintenance and landscaping renovation tasks to care for the City's athletic fields, squares, parks, playgrounds, stadiums, thoroughfares, medians and/or other landscaped areas.

A. Prior Discipline

In 2020, Mr. Santiago received a 10-day suspension for misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area, failing to notify supervisor after completing work early; violation of the City's Attendance and Punctuality Policy; and dishonesty. These charges were based on his misconduct as follows: (1) On September 24, 2019, Mr. Santiago and his co-worker failed to report to their assigned work location and spent 79 continuous minutes driving to Golden Gate Park, which is 3.8 miles away from the assigned work location; (2) On September 25, 2019, Mr. Santiago and the same co-worker arrived late to the assigned work location and could not account for their time; and (3) on September 25, 2019, after completing the assignment, Mr. Santiago and the same co-worker drove around in the City vehicle for 96 continuous minutes; the vehicle was stopped ten miles away from the assigned work location.

Mr. Santiago's dishonesty; misuse of City time and resources; violation of Department Policy and Procedures: leaving assigned work area; and violation of City's Attendance and Punctuality Policy has continued.

B. December 1, 2020 Whistleblower Complaint

The Department received a Whistleblower Complaint from the City's Whistleblower Program that on December 1, 2021 at approximately 12:15 p.m., a Department employee (Hispanic with shaved head) dropped off 20 rolls of sod owned by the City to a private residence at 377 Naples Street driving a white twin cab pick-up vehicle 450-608. The Whistleblower program provided the GPS report for 450-608. GPS showed the vehicle stopped at the following locations:

Location	Time Spent Driving to Location	Stop Duration
4228 Ocean Ave; Lakeshore Plaza	45 minutes	7:51 a.m. to 8:14 a.m. (23 min)
Junipero Serra Blvd	1 1 minutes	8:25 a.m. to 10:26 a.m. (2 hrs, 1 min)
Laguna Honda Blvd; Balceta Ave	12 minutes	10:38 a.m. to 11:15 a.m. (37 min)
Sloat Blvd at Sunset Avenue	14 minutes	11:29 a.m. to 11:50 a.m. (21 min)
377 Naples Street	22 minutes	12:12 p.m. to 12:23 p.m. (11 min)
601 Excelsior Avenue	2 minutes	12:25 p.m. to 12:31 p.m. (6 min)

On February 25, 2021, City Administrator Human Resources (CAHR) was asked to further investigate the complaint. A detailed investigative report was reviewed prior to holding the *Skelly* Meeting.

SKELLY MEETING

Mr. Santiago was originally scheduled for a *Skelly* meeting on August 19, 2021. The Department allows for a one-time reschedule. Mr. Santiago was notified via hand-delivery on August 26, 2021, that his rescheduled *Skelly* meeting was August 31, 2021 at 2:00 p.m.

On August 31, 2021, a *Skelly* meeting was held at 2323 Cesar Chavez Street, Building A – SSR Conference Room. Present at the *Skelly* meeting were Theresa Foglio, Union representative, Local 261, Nicholas Crawford, Acting Superintendent, Bureau of Urban Forestry, and Jason Jimenez, Senior Employee Labor Relations Analyst. I, Breonna Santiago, Human Resources Analyst, Office of the City Administrator, served as the *Skelly* meeting officer.

At the *Skelly* meeting, Mr. Santiago and his union representative were provided the opportunity to respond to the Department's Notice of Proposed Disciplinary Action. However, Mr. Santiago was not present due to unconfirmed health reasons. As a courtesy, I afforded Mr. Santiago the option to provide a written statement as the *Skelly* Notice states with a response deadline of September 7, 2021 by close of business.

The *Skelly* process is an opportunity to obtain information that can confirm, exonerate, or mitigate the conduct of an employee. This information may affect the imposition of discipline or the type of discipline. My role as the *Skelly* meeting Officer is to be an impartial, non-involved reviewer of the facts involved in a disciplinary matter. My role is not to substitute judgment with respect to the discipline to be imposed, but rather to reach a conclusion as to whether, based upon the record, there are reasonable grounds to proceed with the proposed discipline, or whether it should be modified or revoked.

My review and analysis of the information provided by all parties is as follows:

FINDINGS

Charge 1: Dishonesty

Mr. Santiago has a demonstrated history of being dishonest. Specifically, his prior discipline concerned his whereabouts during his assigned shift and work location. Evidence supported a 10-day suspension because Mr. Santiago was dishonest about where he and his coworker were for 79 minutes prior to this work assignment and 96 minutes after completion of the assignment. Mr. Santiago could not account for his time or location, and thus the dishonesty charge was sustained.

Similarly, here, Mr. Santiago is the subject of a Whistleblower complaint regarding this whereabouts during his assigned work shift, what he did with sod that was instructed by

management to be disposed, and where he took the sod. The Whistleblower identified and clearly described City vehicle #450-608, and Mr. Santiago, as a Hispanic male with a shaved head as the driver. This has been verified by the Keywatcher report and employee photo of Mr. Santiago. Mr. Santiago's start time is 5:00 a.m. and he clocked in to begin his shift at 7:00 a.m. When Mr. Santiago's supervisor, Douglas Reed, 3422 Park Section Supervisor, addressed his late arrival, Mr. Santiago said, "I thought I started at 7:00 a.m." This is conscious dishonesty as Mr. Santiago's start time all other days prior to December 1, 2020 began at 5:00 a.m. The Whistleblower saw Mr. Santiago take 20 rolls of sod to a private residence. Mr. Santiago denies that he took the sod, explained that he was told it was being discarded anyway and denies his insubordination by not disposing the sod as instructed, and that he took the sod to an unauthorized location. However, all evidence supports that Mr. Santiago is being dishonest with regards to where he was that day, what he did with sod, and where he took it. Therefore, Mr. Santiago is consistently dishonest, which is unbecoming of a City employee.

The Charge of Dishonesty is SUSTAINED.

Charge 2: Misuse of City Time and Resources

Mr. Santiago's scheduled work shift is 5:00 a.m. to 2:00 p.m. Mr. Santiago did not adhere to his reporting time and drove his assigned City vehicle to an unauthorized location, which is other than the worksite. All evidence supports the charge of his misuse of City time and resources.

The Charge of Misuse of City Time and Resources is SUSTAINED.

Charge 3: Violation of Department Policy and Procedures (Leaving Assigned Work Area)

Mr. Santiago's authorized work location on December 1, 2020 was Juniper Serra Blvd. Based on City Vehicle#450-608's GPS, Mr. Santiago went to five unauthorized locations: 1) 4228 Lakeshore Plaza, 2) Laguna Honda and Balceta Ave, 3) Sloat Ave and Sunset Blvd (location of sod), 4) 377 Naples St. (private residence reported by Whistleblower), and 5) 601 Excelsior Ave.

According to Douglas Reed's interview, Mr. Santiago did not receive approval to leave his assigned work area to any of the five locations identified in the investigative report and found on the GPS of his City assigned vehicle. There are not any documented service orders nor was Mr. Santiago assigned a special project at either of these locations, including the location of the sod at Sloat Ave and Sunset Blvd. Due to lack of supporting evidence that Mr. Santiago was instructed to be at any of these locations and Mr. Reed's interview, it can be concluded that Mr. Santiago was not authorized to be anywhere but his assigned work location at Juniper Serra Blvd.

The Charge of Violation of Department Policy and Procedures (Leaving Assigned Work Area) is SUSTAINED.

Charge 4: Violation of City's City Vehicles Policy; Citywide Vehicle Use Policy; and Department's City Vehicle Use Policy

On December 1, 2020, Santiago violated the City's City Vehicles Policy contained in the City's Employee Handbook; the Citywide Vehicle Use Policy; and the DDO's City Vehicle Use Policy memo when he used a City vehicle and City resources for non-City business when drove he parked his City vehicle at five non-work locations.

The Charge of Violation of City's City Vehicles Policy; Citywide Vehicle Use Policy; and Department's City Vehicle Use Policy is SUSTAINED.

Charge 5: Violation of City's Attendance and Punctuality Policy

Mr. Santiago has a history of violating City's Attendance and Punctuality Policy. Mr. Santiago not only arrived two hours late to work, but also reported 6 hours of regular work when evidence demonstrates that Mr. Santiago only spent 2 hours and 1 minute at his assigned work location, Juniper Serra Blvd based on GPS records. Mr. Santiago demonstrates a lack of respect for his employment, his assignments, colleagues and department, and at large, City and County of San Francisco and the public we serve.

The Charge of Violation of City's Attendance and Punctuality Policy is SUSTAINED.

CONCLUSION

Mr. Santiago provided a written response on September 7, 2021 that: 1) disputes dates of the *Skelly* Notice delivery; 2) disputes the Whistleblower's identification of the full vehicle number; 3) disputes data in the vehicle log photo as "unassigned"; 4) describes the time of the vehicle's location between 12:12 p.m. and 12:28 p.m. is a discrepancy; and 5) alleges that Douglas Reed provided false statements regarding a project on Balceta Ave and City and County of San Francisco, Public Works have falsified documents threatening Penal Code 115.

First and foremost, this statement came from Mr. Santiago's personal email and references Mr. Santiago in third person. It is unclear if this statement was in fact written by Mr. Santiago himself.

Secondly, the purpose of the written statement is to respond to all charges made against Mr. Santiago. Mr. Santiago failed to make a compelling argument to dispute each charge and how his character is described as an unbecoming City and County of San Francisco employee. Mr. Santiago opted to combat information that is supported by the Whistleblower's statement and description of the event, photo evidence, payroll and Keywatch records, as well as interview statements from other Bureau of Urban Forestry staff.

All of the evidence and Mr. Santiago's written *Skelly* response in lieu of attending the rescheduled *Skelly* meeting confirm that Mr. Santiago has a lack of respect his work, his colleagues and department, City time, resources, and policies that prevent unbecoming behavioral patterns. Mr. Santiago was afforded an opportunity to correct his behavior after

his 10-day suspension. But, he continued to demonstrate his carelessness for his City employment. Therefore, I uphold the recommendation for Mr. Santiago's dismissal from City and County of San Francisco employment.

EMPLOYEE ASSISTANCE PROGRAM



EAP counselors are here for you, offering confidential, voluntary, free services to help support your emotional well-being.

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- Couples Counseling
- Referrals
- Mediation
- Critical Incident | Disruptive Event Response
- Workshops, Brown Bag Seminars, Trainings

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EAP counselors offer a variety of services

COUNSELING

Emotional stress can affect your physical health, relationships, sense of well-being and work performance. Communication difficulties can interfere with relationships at work and at home.

Getting help early can make a difference – You or an immediate family member may use up to six (6) EAP counseling session per year. Call EAP for a consultation or to schedule an appointment for individual or couple counseling.

REFERRALS

If you need additional services, EAP can provide guidance on accessing mental health care and substance abuse services offered through your health plan or a community resource. EAP can also provide resources for domestic violence, elder care, legal support and financial concerns.

WORKSHOPS, BROWN BAG SEMINARS & TRAININGS

EAP offers opportunities to help increase your well-being and capabilities in the workplace. Ask your Wellness Champion or your manager about bringing a workshop, seminar or training to your work group.



MEDIATION

Mediation is available to help you find resolution of interpersonal workplace problems that result from personality conflicts, communication difficulties and duty disagreements. Mediation must be arranged by your supervisor with an EAP counselor.

CRITICAL INCIDENT | DISRUPTIVE EVENT RESPONSE

Even emotionally resilient people may experience strong reactions when exposed to a traumatic or disruptive event. EAP is here to help support you process such an event so you can return to your regular routine.

WE'RE HERE *For You*
