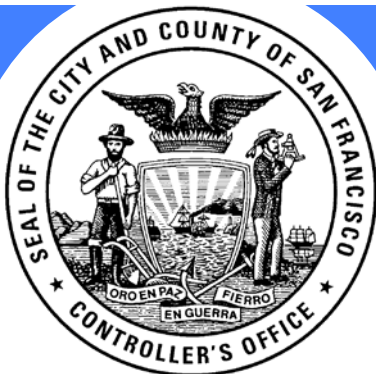


Public Integrity Review

Preliminary Assessment:

Gifts to Departments Through Non-City Organizations Lack Transparency and Create “Pay-to-Play” Risk



CITY & COUNTY OF SAN FRANCISCO

Office of the Controller

September 24, 2020

Assessment Summary

This preliminary assessment report summarizes gifts and support benefitting city departments from city contractors and building permit applicants and holders through **non-city organizations**, including *Friends of organizations*, and focuses on San Francisco Parks Alliance (the Parks Alliance), a nonprofit organization, and its relationship with San Francisco Public Works (Public Works), a city department. This assessment is the second in the series, is offered for public comment and review, and may be revised in the future as our work continues. Additional reviews of other internal control processes will be released as our Public Integrity Review progresses.

- **Inappropriate fundraising and directed spending.** Mohammed Nuru and others would direct staff to procure goods and services for staff appreciation, volunteer programs, merchandise, community support, and events from specific vendors, circumventing city purchasing controls. These purchases would then be reimbursed through Public Works subaccounts held by the Parks Alliance, a non-city organization, again outside of city purchasing rules. Mr. Nuru solicited funds for these purchases from interested parties, including businesses that had contracts with the department or city building permits. The gifts, which were not accepted or disclosed by the City, create a perceived “pay-to-play” relationship.

Assessment Summary *(continued)*

This assessment offers recommendations to reduce these risks:

- **The City should prohibit non-elected department heads and employees from soliciting donations from those they regulate or do business with (“interested parties”), unless specifically authorized by the Board of Supervisors.** Given the reliance of some functions on philanthropy, such as for the City’s museums and parks, exceptions to this prohibition would be narrowly approved by the Board to permit fundraising by specific employees for specific public purposes. Authorized fundraising should be publicly reported using existing procedures that apply to elected officials but do not currently apply to other city officers and employees.
- **The City needs to improve compliance with restrictions on and reporting requirements for acceptance of gifts from outside sources.** The City has laws requiring acceptance and reporting of gifts for public purposes, but adherence to these laws is not uniform. Policies and procedures should be reviewed and strengthened, including establishment of clearer procedures and definitions, improved public reporting and transparency, and periodic auditing of these processes.

Assessment Summary *(continued)*

- **Donors of all gifts accepted by the City should be disclosed, and consistent with existing law, anonymous donations should be prohibited.** To avoid the real and perceived risk of facilitating “pay-to-play” relationships, any donations that will be used to benefit a city department or city employees should be publicly reported in a manner that permits public transparency. By accepting anonymous donations, which are prohibited by the City’s Sunshine Ordinance, the City runs the risk of taking payments from donors with financial interest.
- **The City should amend practices and procedures to reduce the incentive to use outside gifts to support staff appreciation.** Although our review found instances of gifts received being spent through seemingly inappropriate processes, they appeared to generally be for legitimate public purposes, including staff appreciation and celebration of team accomplishments. The City could reduce risks arising from use of gifts for staff appreciation by more clearly defining the permissible uses of public funds for these purposes, removing administrative barriers that make such uses impractical, and appropriating funds for these purposes.

Background on the Public Integrity Investigation

The City Attorney's Office (City Attorney) is leading the investigation into alleged wrongdoing by city employees outlined in criminal charges brought by the U.S. Attorney's Office against Mohammed Nuru, former director of Public Works; Nick Bovis, owner of Lefty's Grill and Buffet at Fisherman's Wharf and other restaurants; Sandra Zuniga, former director of the Mayor's Office of Neighborhood Services; Florence Kong, former member of the Immigrant Rights Commission; Balmore Hernandez, chief executive of engineering firm AzulWorks, Inc., a company with large city contracts; and Wing Lok "Walter" Wong, permit expediter and owner of numerous entities that do business with the City.

Mr. Bovis and Mr. Wong have pled guilty to schemes to defraud the City using bribery and kickbacks. Mr. Wong admitted to conspiring with Mr. Nuru and other unnamed city officials since 2004. Both are now cooperating with the ongoing federal investigation.

The City Attorney has focused its investigation on misconduct by current and former city employees and any remedies for specific decisions or contracts tainted by conflicts of interest or other legal or policy violations. On July 14, 2020, the City Attorney moved to debar AzulWorks, Inc., from contracting with the City for five years — the maximum duration allowed under the law.

The Criminal Complaint Against Nuru and Bovis

The FBI affidavit in support of the criminal complaint alleges that Mr. Nuru and Mr. Bovis tried to bribe a member of the San Francisco Airport Commission in exchange for assistance in obtaining a city lease at San Francisco International Airport for a company of Mr. Bovis. The complaint details the relationship between Mr. Nuru and Mr. Bovis, including a recorded conversation in which they discussed a voucher deal that allowed **Public Works employees to receive free meals from one of Mr. Bovis's restaurants**, the cost of which was then **reimbursed to Mr. Bovis's company with Public Works funds**.*

Further, according to the complaint, in another recorded conversation Mr. Bovis stated that, in exchange for Mr. Nuru's assistance in steering one or more city contracts to Mr. Bovis, Mr. Bovis (or others at his direction, presumably) would make **donations to nonprofit organizations of a city official's choice**.

* It appears that these reimbursements were made through the *Friends of* account's subaccounts associated with Public Works held by the Parks Alliance.

Non-City Organizations

Some **nonprofit or third-party (non-city) organizations** provide financial and/or programmatic support to a city department or group of departments to improve delivery of government services, meet philanthropic goals, support the training and development of city employees, or provide other support services to the department(s).

On February 7, 2020, the Controller requested all 56 city departments to provide information about accounts for non-city organizations supporting them.

Departments responded, and based on the responses received:

- 33 departments report non-city organizations with **588** accounts or subaccounts associated with them.
- 23 departments report no non-city organizations associated with them.

The **588** reported accounts or subaccounts for non-city organizations associated with one or more city departments include fiscal agents, fiscal sponsors, trustee or agent accounts, contracts, grants, foundations, funds, *friends of* organizations, and others. Many of these accounts are not actually with non-city organizations because they are subject to city processes, are reported in the financial system, and do not receive gifts that are ultimately spent on the City.

Friends of Organizations

Friends of organizations are generally distinguished by the fact that they are intended to financially support the department with which they are associated and charitable donations are their primary revenue source, and thus are spent on the City. For example, the description of one *Friends of* organization states it was created upon, “realizing that the city budget had no discretionary funds for training, education, special projects and small programs...”

The next section focuses on *Friends of* organizations identified through the Controller’s survey. **Recommendations determined by this analysis of *Friends of* organizations should be applied to non-city organizations that operate in a comparable manner.**

Friends of Organizations Reported by Departments

Listed below are *Friends of* organizations and their reported use, the amount of city funding received, and whether donors are publicly reported

<i>Friends of</i> Organization	Department or Commission	Donors Publicly Reported?	Reported Purpose & Use	City Funding Received ¹ July 1, 2015, Through June 30, 2020
San Francisco Aeronautical Society	Airport	No	Preserve and share history of commercial aviation to enrich the public experience at the Airport	\$50,000
Friends of Animal Care & Control	Animal Care & Control	No	Support department programs and services	none
Friends of the Arts Commission	Arts Commission	Yes ²	Support restoration of civic art collection and arts education initiatives, host annual awards events	none
Friends of SF Environment	Environment	No	Staff development and training, community engagement events	none
Friends of the Film Commission	Film Commission	No	Support Film SF to increase and facilitate opportunities for production	none
Friends of City Planning	Planning	No	Various projects	none

¹ City funding may not be directly for or associated with role as a *Friends of* organization.

² Anonymous donors reported, sometimes as funds or matching gifts.

Continued on next page.

Friends of Organizations Reported by Departments *(continued)*

<i>Friends of Organization</i>	Department or Commission	Donors Publicly Reported?	Reported Purpose & Use	City Funding Received ¹ July 1, 2015, Through June 30, 2020
Friends of the Port	Port	Yes ²	Promote civic events on San Francisco Bay waterfront	none
San Francisco Public Health Foundation	Public Health	No	Support administrative and support services for various programs	\$9.7 million
San Francisco General Hospital Foundation		Yes ²	Support initiatives including research, education, and care	\$485,381
Friends of Laguna Honda		No	Support programs that spark joy and connection to the community and engage residents' interests	none
Friends of the SF Public Library	Public Library	Yes ²	Support department programs and services	\$109,000
Friends of the Cable Car Museum	SFMTA	No	Preserve cable car history	none
Friends of the Urban Forest	SFPUC	Yes ²	Support programs that plant and care for the City's ideal urban forest	\$7.6 million

¹ City funding may not be directly for or associated with role as a *Friends of* organization.

² Anonymous donors reported, sometimes as funds or matching gifts.

Continued on next page.

Friends of Organizations Reported by Departments *(continued)*

<i>Friends of Organization</i>	Department or Commission	Donors Publicly Reported?	Reported Purpose & Use	City Funding Received ¹ July 1, 2015, Through June 30, 2020
San Francisco Parks Alliance	Public Works	Yes ²	Support department projects and programs, including community events, recreation programs, and staff appreciation programs	\$11.9 million
	Recreation and Park	Yes ²		
Randall Museum Friends	Recreation and Park	No	Support Randall Museum	\$111,075
Friends of Camp Mather		No	Promote, enhance, protect, and support aspects of Camp Mather	\$23,282
Friends of Sharon Arts Studio		No	Promote artistic development, craftsmanship, and creative expression	none
Friends of the Commission on the Status of Women	Status of Women	No	Support programs that ensure equal treatment of women and girls	\$11,525
San Francisco Performing Arts Center Foundation	War Memorial	No	Contribute to and assist in the operation, maintenance, and rehabilitation of War Memorial and Performing Arts Center buildings	\$197,694

¹ City funding may not be directly for or associated with role as a *Friends of* organization.

² Anonymous donors reported, sometimes as funds or matching gifts.

Anonymous Donations

If funds will be spent for city purposes, non-city organizations that either do not publicly report donations or do so but allow anonymous donations violate the disclosure requirement of the City's Sunshine Ordinance and prevent the detection of any financial interest anonymous donors may have with the City. By accepting anonymous donations, the City runs the risk of receiving payments from those it regulates, which is prohibited by the Sunshine Ordinance.

The **Sunshine Ordinance**, Section 67.29-6, states that no "official or employee or agent of the City shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed . . ." City departments must disclose donor names and whether the donor has a financial interest with the City. According to the City Attorney, a financial interest is any contract, grant, lease, or request for license, permit, or other entitlement with or pending before the City. Changes to this section of the Sunshine Ordinance require voter approval.

Preliminary Finding

If non-city organizations receive donations that will be used to benefit the City, they must comply with the donation disclosure requirements of the City's Sunshine Ordinance. Further, the Sunshine Ordinance should define "financial interest."

Public Works and the Parks Alliance

The next section focuses on the Parks Alliance subaccounts for Public Works. Although 33 city departments report having relationships with non-city organizations, we focus here on the relationship between Public Works and the Parks Alliance because of the criminal investigation of Mohammed Nuru, who, as the former Public Works director, allegedly solicited donations from private companies or individuals, directed these donations to the Parks Alliance subaccounts for Public Works, and influenced procurement decisions from those subaccounts.

The Parks Alliance states it did not know that its fiscal agency was being used unscrupulously by city officials. The Parks Alliance also states that it did not profit from the relationship with Public Works and had reached out to Mr. Nuru in 2019 to formalize its relationship with the department through a memorandum of understanding, though this effort was ignored.

The Parks Alliance

The Parks Alliance is a 501(c)(3) nonprofit organization that works with or serves as a fiscal sponsor for 200 groups and city agencies, allowing them to seek grants and solicit tax-deductible donations under its tax-exempt status. In addition to Public Works, the Parks Alliance partners with the Office of the City Administrator, Office of Economic and Workforce Development, Office of the Mayor, Port of San Francisco, Recreation and Park Department, and San Francisco Planning (the Planning Department) to support citywide open space and park infrastructure.

According to its website and annual reports, the Parks Alliance addresses issues affecting not just parks, but also public spaces such as plazas, parklets, staircases, medians, and alleys. In 2018 it worked with its partners to complete over 20 park projects, engage over 100,000 residents in park programming, and help raise over \$20 million for essential capital projects. In 2019 it brought thousands of people together for sing-alongs at movies in parks, transformed abandoned alleys into welcoming pedestrian thoroughfares, and built over 20 miles of park trails.

The Parks Alliance regularly posts its annual report and audit reports on its website. According to its 2019 audit report, the Parks Alliance received grants and contributions of \$18.9 million and spent \$17.7 million.

The Public Works Subaccounts at the Parks Alliance Operate Like a City Account Without City Oversight

Preliminary Finding

The Public Works subaccounts at the Parks Alliance operate like a city account in that invoices were directed and approved by Public Works employees and tracked by both Public Works and the Parks Alliance, although all outside of the City's procurement and financial system. **Because the subaccounts operate outside of the City's purview, they are not subject to the same review and controls that would otherwise occur to comply with the City's accounting and procurement policies and procedures.**

This arrangement created the opportunity for unethical steering of purchases to occur. According to Public Works staff, Mr. Nuru directed some of the purchases made from the account. According to Public Works, this direction, consistent with the **tone at the top** when Mr. Nuru was the director, and the fact that other departments have accounts with non-city organizations that are not regulated, caused staff not to question the way the Public Works subaccounts at the Parks Alliance functioned.

Differences in Controls Over Friends of Organizations

Contrary to the lack of controls over the Public Works subaccounts at the Parks Alliance, the Parks Alliance, in its relationship with Recreation and Park, and the Friends of the San Francisco Public Library, whose mission is to strengthen, support and advocate for a premier public library system, have policies, processes, and reporting requirements that give the City and the public a view into the accounts and promote confidence that their expenditures will be legitimate.

Policy, Process, or Reporting Requirement Involving the City	San Francisco Parks Alliance		Friends of the San Francisco Public Library
	Public Works	Recreation and Park	Public Library
Memorandum of Understanding Defining Its Relationship With City	No	Yes*	Yes
Gift Reporting to Board of Supervisors, Including Formal Process for Accept and Expend	No	Yes	Yes
Existing Agreement to Comply With San Francisco Sunshine Ordinance, Section 67.29-6	No	No	Yes

* Recreation and Park and the Parks Alliance set up memorandums of understanding for individual projects.

Friends of the San Francisco Public Library

All non-city organizations should comply with the Sunshine Ordinance, Section 67.29-6, which states that if the funds are provided or managed by an entity, not an individual, that entity must agree in writing to abide by the ordinance. As shown on the preceding slide, the Public Library has a memorandum of understanding with the Friends of the San Francisco Public Library that defines the organization's roles and allowable practices, contains an audit clause, and establishes requirements for it to adhere to the City's Administrative Code with respect to the acceptance of gifts. Consistent with this agreement, the Public Library:

- Annually accepts and expends funds as part of its budget process to obtain the Board of Supervisors' approval for cash or in-kind goods or services worth over \$100,000 from Friends of the San Francisco Public Library for direct support of the department's programs and services in the upcoming fiscal year (**Administrative Code, Sec. 10.100-87, Library Gift Fund**).
- Discloses all gifts over \$100 on its website and, since fiscal year 2019-20, discloses donors with active contracts (**Sunshine Ordinance, Sec. 67.29-6**).

Legal Requirements for Gifts to the City

City departments may have special funds with authorized sources and uses in Administrative Code Sec. 10.100 that they can use to accept and expend gifts. Regardless of the fund to which gifts are directed, all departments must comply with the following reporting and disclosure requirements.

The **Administrative Code, Section 10.100-305 (San Francisco Gift Funds)**, requires city departments, boards, and commissions to report all gifts of cash or goods to the Controller, obtain the Board of Supervisors' approval, by resolution, for acceptance and expenditure of any gift of cash or goods with a market value greater than \$10,000, and annually report gifts received, detailing the donors' names, nature or amount of the gifts, and their disposition.

The **Sunshine Ordinance, Section 67.29-6 (Sources of Outside Funding)**, requires disclosure of the true source of any money, goods, or services received worth more than \$100 in aggregate. Disclosure must be on the receiving department's website and must include donor names and any financial interest a donor has with the City. Last, if the funds are provided or managed by an entity, not an individual, that entity must agree in writing to abide by the ordinance.

Impose Gift Requirements for Non-City Organizations

Preliminary Finding

Because the City does not consistently impose gift requirements for non-city organizations, a lack of transparency and inconsistent practices exist among Public Works and the Parks Alliance, and potentially among the 33 other city departments and non-city organizations. To the extent that non-city organizations receive gifts that will be spent on city departments, they should comply with city gift requirements. City departments should formalize their relationships with any non-city organization with which they interact through a memorandum of understanding that is posted on the department's website and that:

- Requires the organization to adhere to the City's Administrative Code, including Section 10.100-305, and any other section that applies to the department.
- States the organization agrees to comply with the City's Sunshine Ordinance, Section 67.29-6, and will file required reports with the Board of Supervisors and Controller.
- Includes clearly defined roles and expenditure requirements and prohibitions.
- Has a clause granting the Controller audit authority and access to the organization's records.
- A requirement to report donations, including grants, on the organization's website.
- Regular public reporting on these funds to occur not less than annually, at the donor or payee recipient level, and posted on the recipient department's website.

Data for the Public Works Subaccounts at the Parks Alliance

The assessment reviewed both the Public Works log for its subaccounts at the Parks Alliance (the Public Works log) and the Parks Alliance's data about the Public Works subaccounts. During July 1, 2015, through January 17, 2020, (the review period) contributions and payments recorded in the **Public Works log were higher by \$26,705 and \$13,391, respectively**. In the two data sets, 98 percent of line items agree.

Some significant disparities between the two datasets include:

- Public Works log shows donations of \$42,750 by SF Clean City Coalition and \$12,083 by PG&E that Parks Alliance data does not.
- Parks Alliance data shows a city grant of \$22,925 that the Public Works log does not.
- Variances in recorded individual payment amounts range from nine cents to \$7,429 and are spread among 27 vendors or individuals.

Data for the Public Works Subaccounts at the Parks Alliance *(continued)*

Preliminary Finding

Public Works does not properly oversee the Parks Alliance subaccounts.

Departments should work with their non-city organizations to ensure funds in such organizations are managed appropriately. Because the funds the Parks Alliance raised were to be spent on the department, Public Works should have an accurate and timely understanding of all contributions to and payments from the organizations. Although Public Works received data from the Parks Alliance, which the department then turned into its log, Public Works did not maintain communication to ensure its documentation of contributions and payments agreed with the Parks Alliance's records. According to Public Works, unclear and inaccurate recordkeeping was largely due to the tone at the top, as Mohammed Nuru did not give staff clear direction or guidelines and did not define roles or responsibilities for managing these subaccounts.

For the remainder of the assessment, **the team focused on the Public Works log** because its data is nearly the same as the Parks Alliance financial data. In fact, it contains more information—and was available for Mr. Nuru to review.

Four Parks Alliance Subaccounts Relate to Public Works

The Public Works log for **July 1, 2015, through January 17, 2020**, shows the following Public Works subaccounts at the Parks Alliance. (To put the totals below in context, a Parks Alliance 2019 audit report shows the organization in one year received grants and contributions of \$18.9 million and spent \$17.7 million.)

Subaccount	Reported Description & Uses	Contributions	Expenses
DPW Special Projects (8420)	Payments and reimbursements for staff appreciation	\$400,216	\$370,230
DPW Clean Team (8421)	Payments and reimbursements for monthly Clean Team events	198,114	197,520
DPW Giant Sweep (8423)	Payments and reimbursements related to the Giant Sweep campaign	390,500	402,616
Fix-It Team (8424)	For community outreach and to fix quick, actionable problems in the City	2,000	1,807
	Three subaccounts no longer in use*		8,565
Total		\$990,830	\$980,738

* Three subaccounts had no expenditures after fiscal year 2018-19: DPW Maintenance (8419), DPW Street Parks (8433), and American Community Gardening Association Conference (8422).

Source: Public Works log and Public Works

Much of the Spending From the Parks Alliance's Public Works Subaccounts Was for Employee Events

For the review period, the Public Works subaccounts at the Parks Alliance were largely used to pay for staff appreciation, department initiatives with volunteers, and merchandise, generally at Public Works' direction.

Expense Type	Amount
Employee events, appreciation, and training, including holiday parties, picnics, meals, awards, conferences, and Bay to Breakers participation	\$375,631
Purchases for volunteer programs and campaigns, such as Arbor Day, Love Our City, Community Clean Team, and Giant Sweep	284,906
Merchandise, including shirts, hats, tote bags, key tags, and pins	249,693
Community support or events for neighborhoods or community groups	42,906
Employee attendance at community events, such as luncheons and galas for community organizations	17,542
Other miscellaneous or vague reimbursements	10,060
Total	\$980,738

Source: Public Works log

The Public Works Log Lacks Detail

We could not identify the purpose of some expenditures from the Public Works log (which matched the Parks Alliance financial data) due to insufficient detail in the records to justify the cost.

- Example 1: From April 2016 through May 2019, multiple payments totaling \$164,885 were made to SDL Merchandising for various shirts, caps, and merchandise. No quantities are documented.
- Example 2: On April 27, 2018, two payments totaling \$27,316 were made to Spice It Up Catering. No detail, including the quantity of food and/or beverages provided, is documented.
- Example 3: On January 31, 2016, an employee was reimbursed \$1,654. The only detail documented is "Exp. Reimbursements."
- Example 4: On September 13, 2015, an employee was reimbursed \$1,520. The detail documented is "Reimb." and "Special Projects."

Further, \$4,000 is recorded incorrectly because \$6,000 was deducted from the department's Special Projects subaccount, with a note that it is for the Fix-it subaccount (that Sandra Zuniga oversaw), yet the corresponding entry shows only \$2,000 added to the Fix-it subaccount. This amount is not missing from the Parks Alliance data.

The Public Works Log Lacks Detail *(continued)*

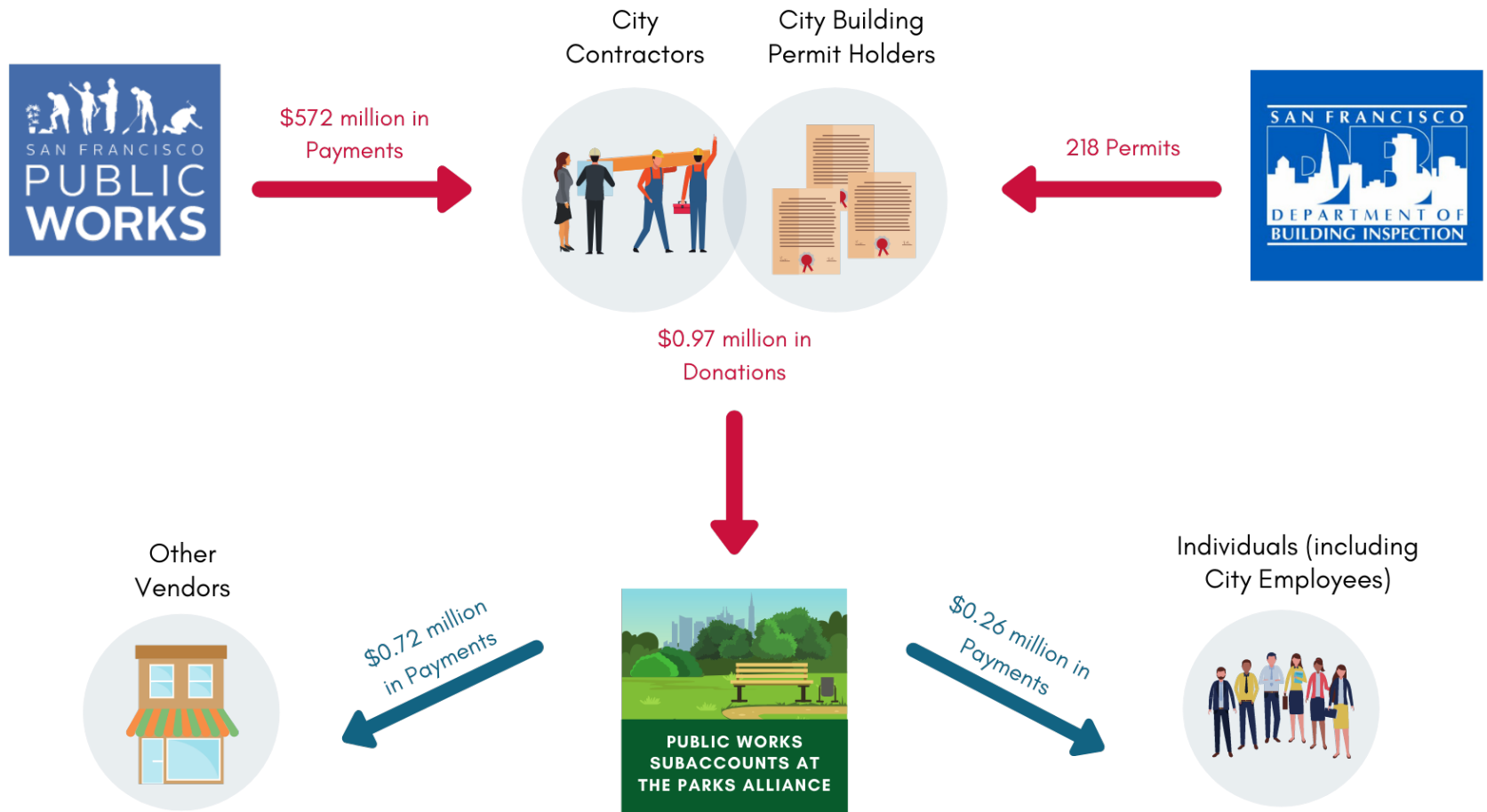
Preliminary Findings

Due to insufficient oversight and documentation, it is unclear how thousands of dollars of Parks Alliance funds were spent, making it difficult to ascertain whether the funds were spent for legitimate and legal purposes.

Although they agree to the Parks Alliance financial data, some transactions on the Public Works log are unclear, so we cannot identify the true nature of payments or whether the products and services ordered were consistent with the price paid. Further, based on our review, at least \$4,000 is recorded incorrectly in the Public Works log.

Although it did not appear that any payments were gifts, if any were, they may have come from restricted sources, as some donations clearly came from those doing business with the City, which is prohibited by the City's Campaign and Governmental Conduct Code, Section 3.216. Further, if any were gifts instead of reimbursements, this could violate Public Works' Statement of Incompatible Activities, which prohibits officers and employees from accepting any gift that is given in exchange for doing their city job.

The Flow of Funds Between the City and the Public Works Subaccounts at the Parks Alliance Is Complex



Donations to the Public Works Subaccounts at the Parks Alliance Could Give the Appearance of “Pay to Play”



For the review period, Public Works paid **eight** contractors a total of **\$572 million** through contract purchase orders or other voucher payments, and the Department of Building Inspection issued **218 building permits** to **seven** entities that, during this same period, donated **\$966,247** to the Public Works subaccounts at the Parks Alliance. Other donors contributed an additional \$26,583 to the Public Works subaccounts at the Parks Alliance, bringing total donations to \$992,830.*

* Total donations exclude a Fix-it subaccount adjustment that reduced the amount by \$2,000.

Donations to the Public Works Subaccounts at the Parks Alliance

Below are the city contractors and building permit holders that donated to the Parks Alliance's Public Works subaccounts during the review period.

Donors	Donations Made to Public Works Subaccounts at Parks Alliance		Building Permits at Time of Donation	Public Works' Payments to Contractor/Permit Holder		Other Departments' Payments to Contractor/Permit Holder	
	Amount	% Total	Number	Amount	% Total	Amount	% Total
SF Clean City Coalition ¹	\$721,250	88%	0	\$3,288,175	1%	\$1,784,618	0%
Recology ¹	131,948		4	5,775,113	1%	116,493,379	10%
Pacific Gas & Electric	42,083	4%	8	3,236,409	1%	211,720,652	18%
Emerald Fund II LLC ²	17,000	2%	6	0	0%	22,745,925	2%
Clark Construction	16,266	2%	60	247,209,740	43%	27,706,950	3%
Webcor Construction	15,000	2%	45	193,766,898	34%	762,909,564	66%
Laborer's Int'l Union	11,200	1%	0	273,197	0%	7,145,116	1%
Pankow Construction	10,500	1%	88	118,719,636	20%	966,497	0%
Airbnb	1,000	0%	7	0	0%	0	0%
Total	\$966,247		218	\$572,269,168		\$1,151,472,701	

¹ According to the City Attorney's Public Integrity Unit, SF Clean City Coalition received \$150,000 from Recology in each of three years—2015, 2017, and 2018—for Public Works' Giant Sweep program, Clean Team program, staff enrichment, and community events. In 2019 Recology donated \$180,000 for the Giant Sweep and Clean Team programs to SF Clean City Coalition, which then paid \$171,000 to the Parks Alliance.

² Emerald Fund II LLC, also known as Emerald Fund, Inc., includes 1045 Mission LP, Harrison Fremont Holdings LLC, 100 Van Ness Associates, Hayes Van Ness Associates, Emerald Polk LLC, and EBG II LLC.

Source: Public Works log; City's financial system for contractor/permit holder payments; DataSF for permits

Donations to the Public Works Subaccounts at the Parks Alliance *(continued)*

Preliminary Finding

When city contractors or city building permit applicants or holders donate to non-city organizations, such as those maintained by the Parks Alliance for Public Works, it can create a “pay-to-play” relationship. Specifically, a non-city organization can serve as an intermediary between the City and a contractor or potential contractor, wherein the contractor donates money to influence (or try to influence) a city department to grant, extend, or augment a city contract, subcontract, or grant. Similarly, a non-city organization can also serve as an intermediary between the City and a building permit applicant, wherein the applicant donates money to influence (or try to influence) the permit approval process.

Departments are not required to track or report on donors to their affiliated non-city organizations that have contracts or permits with the department or City. However, as donations to non-city organizations ultimately benefit the City, departments should report the donors to non-city organizations and the donor’s financial interest as required under the City’s Sunshine Ordinance, Section 67.29-6, on both the non-city organization’s and department’s website.

Tone at the Top

“Tone at the top” refers to the ethical atmosphere that is created in the workplace by the organization's leadership. **Failure to maintain such a workplace culture can result in the pressure, rationalization, and ability to carry out ethical violations.**

The 2019 Office of the City Administrator and Public Works holiday party illustrates this problem.

Based on information from the City Attorney's Public Integrity Unit, Mr. Nuru solicited funds from companies with business or regulatory decisions before Public Works. These funds were then used to host the party and other employee appreciation events that benefitted those in the department. **Together these acts create an acceptance of a gift from a “restricted source,” which is prohibited under city ethics laws.**

Tone at the Top *(continued)*

Mr. Nuru personally solicited these funds and directed others in the department to do the same. Approximately \$33,000 (or 80 percent) of the event's total cost of more than \$40,000 was donated by restricted sources, including Recology, Inc. His appointing authority, the City Administrator, was aware of his solicitation efforts.

The holiday party was limited to 350 attendees, including both city staff and contractor representatives, leading to a total benefit per person in excess of the \$25 non-cash gift threshold, per Ethics Commission Regulation 3.216(b)-5, Gifts from Restricted Sources—Exemptions.

These donations were not approved by the Board of Supervisors, which is required for contributions greater than \$10,000 per the City's Administrative Code, nor were they reported to the Controller or on the departments' websites, as city codes require.

The City Does Not Require Department Heads to File the Behested Payments Form

“Behested payments” include **payments made for a legislative, governmental, or charitable purpose at the suggestion, solicitation, or request of, or made in cooperation, consultation, coordination, or concert with a public official.**

When a payment of \$1,000 or more is made at their behest by an “interested party,” certain city officials—but not department heads—must file the City’s Form SFEC-3610(b). Under these circumstances, this form must be filed by the mayor, city attorney, district attorney, treasurer, sheriff, assessor-recorder, public defender, a member of the Board of Supervisors, or any member of a board or commission who is required to file Form 700 (Statement of Economic Interests), including all persons holding positions listed in the City’s Campaign and Governmental Conduct Code, Section 3.1-103(a)(1).

Preliminary Finding

Because the City does not require appointed department heads to file a behested payment form (Form SFEC-3610(b)), they could, as Mohammed Nuru did, encourage, ask, or direct a city contractor to donate to a non-city organization that supports the department head’s department and not be required to report it.

Because Mohammed Nuru Did Not Have to File the Behested Payments Form, Behested Regulations Did Not Apply to the Parks Alliance or Its Donors for His Behests

Who Must File	Definition	Parks Alliance Scenario
City Official	A city officer must file Form SFEC-3610(b) when a payment of \$1,000 or more is made at his or her behest by an "interested party."	As an appointed department head, Mr. Nuru was not required to file Form SFEC-3610(b).
Donor	A donor must file Form SFEC-3620 if he or she makes a payment or series of payments in a single calendar year of \$10,000 or more at the behest of a city officer. The donor must make this disclosure only if he or she is an "interested party" in a proceeding involving the city officer who solicited the payment(s).	Because Mr. Nuru did not file Form SFEC-3610(b), Form-3620 was also not required. Further, it is unclear whether the donor was an "interested party," which is discussed on the next slide.
Recipient	An individual or organization must file Form SFEC-3630 if it receives a payment or series of payments in a single calendar year of \$100,000 or more that was made at the behest of any city officer.	Because no Form SFEC-3610(b) was required or filed, Form SFEC-3630 was also not required.

The “Interested Party” Definition for Behested Payments Does Not Clearly Include All City Contractors

According to the Ethics Commission website, the donor is only required to file Form SFEC-3620 if he or she is an “interested party,” which means a person who is a **party** or **participant** to administrative enforcement proceedings regarding permits, licenses, or other entitlements for use before the official in question. A **party** is someone who files the application or is the subject of the proceeding, and a participant has a financial interest in the decision. State regulations specify that a license, permit, or other entitlement includes, “all entitlements for land use, all contracts (*other than competitively bid, labor, or personal employment contracts*), and all franchises.” (emphasis added, Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations, Section 84308)

Preliminary Finding

The City’s definition of an interested party does not explicitly include all city contracts because certain contracts are excluded under the California Government Code, Section 84308. When city contractors with any contract type donate to non-city organizations, it can create a “pay-to-play” relationship. To reduce that risk, the “interested party” definition should be expanded so that persons with all contract types file for behested payments when applicable.

Behested Regulations Only Began in January 2018

The City's Campaign and Governmental Conduct Code, Article 3, Chapter 6, Section 3.610, Required Filing of Behested Payment Reports, and Section 3.620, Filing by Donors, became effective on January 1, 2018, and were updated on January 1, 2019. Section 3.630, Filing by Recipients of Major Behested Payments, became effective on January 1, 2019. As such, for much of the life of the Parks Alliance's Public Works subaccounts and Mohammed Nuru's career at Public Works, these requirements did not exist.

If the current requirements had been in place since July 2015, if Mr. Nuru had been required to file Form SFEC-3610(b), and if the donors were found to have been "interested parties," the Parks Alliance and some of its donors would have had to file behested forms.

If Behested Regulations Had Been Operational and Applied to Department Heads, Further Filings May Have Been Required

Who Must File	Definition	Scenario if Behested Requirements Had Been Operational				
City Official	An officer must file Form SFEC-3610(b) when a payment of \$1,000 or more is made at his or her behest by an "interested party."	If Mohammed Nuru asked that the payments be made and had been required to file due to the payments to the Parks Alliance, the organizations below also would have been required to file.				
Donor	A donor must file Form SFEC-3620 if he or she makes a payment, or series of payments in a single calendar year of \$10,000 or more at the behest of an officer. The donor must make this disclosure only if he or she is an "interested party" in a proceeding involving the officer who solicited the payment(s).	If all payments were behested payments and the donor was an "interested party," a Form SFEC-3620 would have had to be filed for payments to the Parks Alliance by: <ul style="list-style-type: none"> • SF Clean City Coalition for \$721,250 paid over five years. • Recology for \$131,948 paid over five years. • PG&E for \$40,000 paid over three years. 				
Recipient	An individual or organization must file Form SFEC-3630 if it receives a payment or series of payments in a single calendar year of \$100,000 or more that was made at the behest of any officer.	If all payments were behested payments by Mr. Nuru, the Parks Alliance would have had to file Form SFEC-3630 in the following calendar years for the payments it received: <table border="1" data-bbox="966 1285 1825 1380"> <tr> <td>2016 - \$199,500</td> <td>2018 - \$258,714</td> </tr> <tr> <td>2017 - \$197,000</td> <td>2019 - \$285,200</td> </tr> </table>	2016 - \$199,500	2018 - \$258,714	2017 - \$197,000	2019 - \$285,200
2016 - \$199,500	2018 - \$258,714					
2017 - \$197,000	2019 - \$285,200					

Improve Controls Over Solicitations and Behested Payment Reporting

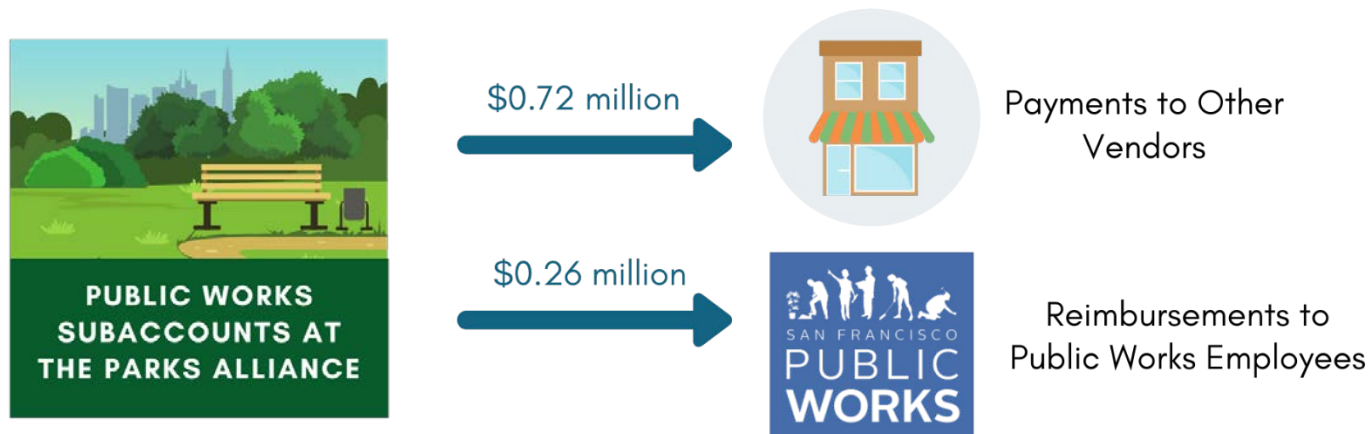
Preliminary Finding

Controls over solicitations and behested payment reporting must be improved to increase transparency. This could be done by reintroducing and updating previous proposals, including:

- File No. 090795 of October 27, 2009, that would have revised the City's Campaign and Governmental Conduct Code to **prohibit city employees and officers from soliciting donations** to nonprofit organizations to fund city departments.
- File No. 180001 to update the Campaign and Governmental Conduct Code, Section 3.207(a)(4), to **prohibit city officials from soliciting behested payments** from individuals who have business before the official.

Given the reliance of some functions on philanthropy, such as for the City's museums and parks, exceptions to this prohibition would be narrowly approved by the Board to permit fundraising by specific employees for specific public purposes. Those authorized to solicit donations should be required to file Form SFEC-3610(b) for behested payments, and consequences for failure to report should be enforced.

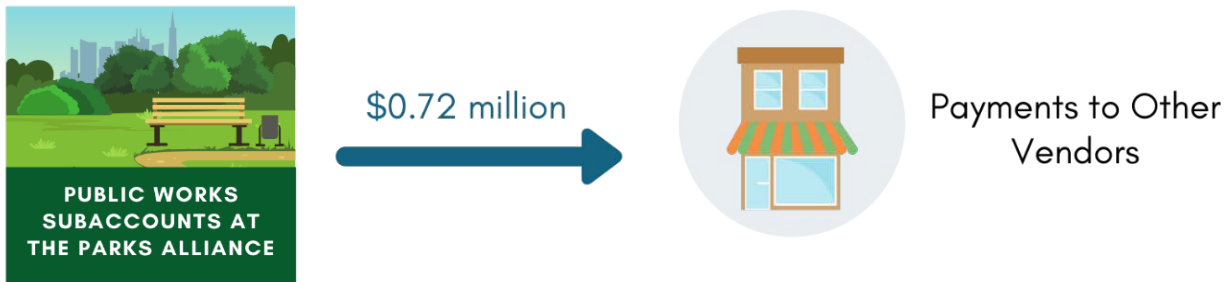
Public Works Used the Parks Alliance's Public Works Subaccounts to Make Payments on Its Behalf



According to the Public Works log, during the review period, the Parks Alliance made **960** payments totaling **\$978,739** to support Public Works activities. As directed by Public Works, the Parks Alliance remitted this amount as direct payments to vendors for the purchase of goods and/or services or as payments to individuals, primarily city employees, who were reimbursed for costs they had incurred. These payments were made directly from the Parks Alliance's Public Works subaccount, so did not interface with and are not reflected in the City's financial system.

* Total payments exclude a Fix-it subaccount adjustment that increased the expenses by \$2,000.

Public Works Directed the Parks Alliance to Pay Vendors



In the review period, more than half—almost \$370,000—of the Parks Alliance’s payments to vendors, totaling almost \$720,000, were to five vendors. These funds were largely spent on staff appreciation and events that benefited city employees. Further, as alleged in the criminal complaint, the principals of at least two of the contractors—Lefty O’Doul’s Foundation or Ballpark Buffet and Walter Wong Construction or Alternate Choice, LLC—had personal and business relationships with Mohammed Nuru.

Preliminary Finding

According to Public Works, Mohammed Nuru would direct staff to use Parks Alliance funds to procure goods and services for events and staff appreciation purchases from specific vendors, and the Parks Alliance would then reimburse those vendors. **Although some purchases appear to be appropriate, others may have been directed by Public Works through these subaccounts due to favoritism and/or to avoid city procurement rules and regulations.**

The Top Five Vendors Paid at Public Works' Direction

Amounts paid from the Public Works subaccounts at the Parks Alliance in the review period.

Vendor Paid at Public Works' Direction	Amount Paid	% Total*	Analysis of Payments
SDL Merchandising	\$164,885	23%	The vendor is owned by a former Public Works employee, who was still employed when the payments occurred. Absent an additional employment approval, it is inappropriate for city employees to do business with the City. Also, accounting records show payments were for shirts, caps, and other merchandise created for Public Works, but lack detail of quantity purchased to indicate whether payments were justified or reasonable.
Spice It Up Catering	108,621	15%	Payments were for catering at several annual picnics and other Public Works events. Accounting records lack detail to indicate whether payments were justified or reasonable.
W. Wong Construction & Alternate Choice, LLC	41,673	6%	Payments were for equipment, set up, and "trash pickers" for events. Accounting records lack further detail to indicate whether payments were justified or reasonable.
Community Youth Center	29,450	4%	Payments were mostly for sponsoring community events and activities at this organization's site, which appears reasonable.
Lefty O'Doul's Ballpark Buffet & Lefty O'Doul's Foundation	25,327	3%	Payments were for catering and musical performances for events and for staff appreciation. It most likely would have been more appropriate for a city-approved contractor to cater these events.
Total	\$369,956	51%	

*Percentages based on the net amount paid to all contractors of \$720,044.

Source: Public Works log

Some of the Payments Made From the Parks Alliance's Public Works Subaccounts Funded Staff Appreciation

Preliminary Finding

Public Works used its Parks Alliance subaccounts to fund holiday parties, staff appreciation events, and other events that solely benefitted employees.

Unless money is specifically budgeted for this purpose, which is uncommon, the City does not promote staff appreciation through departmental funds. This is true although such appreciation may help to maintain or increase employee morale and recognize good work in an environment where it is often impossible to legitimately grant additional pay. However, the City's practice of avoiding staff appreciation costs in departmental budgets may have contributed to Public Works' reliance on the subaccounts at the Parks Alliance for this purpose.

The City could reduce risks arising from use of gifts for staff appreciation by more clearly defining permissible use of public funds for these purposes, removing administrative barriers that make such uses impractical, and appropriating funds for these purposes. **If departmental budgets more often included public funds for staff appreciation, the City would bring these expenses into its control environment and have more oversight to ensure appropriate and reasonable spending.**

Public Works Employees Used Personal Funds to Pay Upfront Costs for City-Sponsored Events



In the review period, 164 individuals received a net total of \$260,429 in payments from or a refund to the Parks Alliance. Of these 164 individuals, 139 were city employees, and they were paid \$213,790. These payments were usually documented in Parks Alliance records as reimbursements for items such as food, beverages, entry fees for volunteer events, staff appreciation events, or various meetings. The records show that Public Works employees commonly incurred costs (paid out of pocket) on behalf of the department and then sought reimbursement with a request to the Parks Alliance.

Public Works Employees Used Personal Funds to Pay Upfront Costs for City-Sponsored Events *(continued)*

In the review period, the Parks Alliance reimbursed 63 city (mostly Public Works) employees over \$200 each for expenses they incurred related to their city jobs. These reimbursements from the Parks Alliance included payments of:

- **\$10,464** to Sandra Zuniga and **\$483** to Mohammed Nuru, primarily for expenses related to employee appreciation and team building.
- **More than \$10,000 each** to three other employees, one of whom received **almost \$60,000**.

Payments to or (after a cash advance) a refund from 25 other non-city employees totaling \$46,639, which:

- Range from **\$33,000** for a Giant Sweep campaign video and photo production to as little as **\$23.50** for a petty cash replenishment.
- Include **\$482** paid to the family of a Public Works employee.

Public Works Employees Used Personal Funds to Pay Upfront Costs for City-Sponsored Events *(continued)*

Preliminary Finding

Excessive use of non-city organizations to reimburse Public Works employees causes the City to lose financial control over these transactions. Non-city reimbursements to city employees are risky because they occur outside the City's control environment. They lack city pre-approvals, encumbrances of funds, and disbursements, which are designed to prevent and detect improper purchases and payments. Further, asking employees to front money, sometimes up to thousands of dollars, may put an undue financial burden on them even if they are later reimbursed.

No city policy addresses city employees seeking reimbursement from non-city organizations. However, the City's Accounting Policies and Procedures state that employees may be reimbursed (from city funds) for work-related costs, minor, and non-recurring goods up to \$200. This amount was exceeded by some of the reimbursements to city employees from the Public Works subaccounts at the Parks Alliance. The City's policy also directs departments to develop detailed internal procedures for their employee reimbursement pre-approval processes.

Recommendations

Given the findings in this preliminary assessment, we offer the following preliminary recommendations. Recommendations for *Friends of* organizations should be applied to non-city organizations that operate in a comparable manner. We will continue to refine these recommendations as the investigation and review continues and will consider feedback we receive in the review process.

- 1. The City should amend the San Francisco Campaign and Governmental Conduct Code to prohibit non-elected department heads and employees from soliciting donations from interested parties (to be further defined in legislation) of their department, unless specifically authorized by the Board of Supervisors. Those authorized to solicit donations must file Form SFEC-3610(b) for behested payments. Consequences for failure to report should be enforced.**
- 2. The Ethics Commission should expand the definition of who is considered an “interested party” so that it includes all city contractors.**

Recommendations *(continued)*

3. The City should require departments and non-city organizations to formalize their relationships through memorandums of understanding that are posted to departmental websites and include:
 - a) A requirement to adhere to city law on the acceptance of gifts, including the Administrative Code, Section 10.100-305, or other sections that apply to the department.
 - b) An agreement to comply with the Sunshine Ordinance, Section 67.29-6.
 - c) A clause granting the Controller audit authority and access to the organization's records.
 - d) Regular public reporting on these funds to occur not less than annually, at the donor or payee recipient level, and posted on the recipient department's website.
 - e) A requirement to report donations, including grants, on the organization's website.
 - f) Clearly defined roles regarding expenditures, including prohibitions against spending directed or controlled by the recipient.

Recommendations *(continued)*

4. Departments should comply with the Administrative Code, Section 10.100-305, or other sections specifically related to the department, by uniformly obtaining advance acceptance of any gifts from outside sources greater than \$10,000 for the department through non-city organizations, including explicit authorization for uses of these funds for employee recognition or appreciation.
5. The City should require annual certification from department heads that all gifts of goods, services, and funds have been approved by the Board of Supervisors and reported on time, as required.
6. The City should make it easier for departments to use city funds for employee recognition and appreciation events and provide explicit (line-item) appropriations for this purpose.
7. The Controller should, on a sample basis, annually audit organizations that both give gifts to the City and have a financial interest with the City, including a contract, grant, permit, permit application, or other entitlement.

Recommendations *(continued)*

8. Departments should comply with the Sunshine Ordinance, Section 67.29-6, for their non-city organizations by not accepting any donation through anonymous donors or for which they cannot identify the true source.
9. The City should amend the Sunshine Ordinance, Section 67.29-6, to clearly define “financial interest” so that it is aligned with the City’s updated “interested party” definition.
10. For all recommendations made as part of this assessment that require reporting, the City should review and strengthen its consequences for noncompliance.

Completed and Upcoming Public Integrity Reporting

Our Public Integrity Review, performed in consultation with the City Attorney, will continue to assess selected city policies and procedures to evaluate their adequacy in preventing abuse and fraud. Completed, current, and future assessments and reports address the following topics:

1. [San Francisco Public Works Contracting](#) (report issued on June 29, 2020)
2. Ethical standards for commissioners regarding procurement processes of the Airport Commission and other city commissions
3. The City's contractor debarment process
4. The Department of Building Inspection's policies and practices to award permits
5. A final report on the topics covered in this preliminary assessment

Additional reviews and assessments will be determined and performed as the City Attorney's investigation proceeds.

Questions or comments?

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