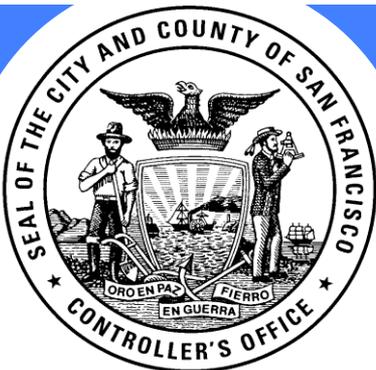


Public Integrity Review

Preliminary Assessment:

San Francisco Department of the Environment's
Relationship with Recology and Lack of
Compliance with Ethics Rules



CITY & COUNTY OF SAN FRANCISCO

Controller's Office

April 8, 2022

Assessment Summary

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The Controller's Office (Controller) conducted this preliminary assessment in coordination with the City Attorney's Office (City Attorney). It is based on findings from our joint Public Integrity investigation, and it supplements the Controller's assessments issued in September 2020 and April 2021 related to Recology's interactions with the City and County of San Francisco (City). The September 2020 assessment made recommendations related to gifts to city departments through non-city organizations and the April 2021 assessment made recommendations related to the City's refuse collection rate-setting process.

This assessment specifically addresses the relationship between the San Francisco Department of the Environment (SF Environment) and Recology (a privately held waste management company that provides refuse services to residential and commercial customers). It examines SF Environment's adherence to ethics laws and mandatory gift disclosure reporting and illustrates how the department's past fundraising solicitations to Recology during contract finalization and signing created the appearance of pay-to-play. This assessment identifies changes made to City law and policy since 2020 and makes preliminary recommendations to further increase accountability and transparency. This assessment is offered for public comment and review and may be revised as our work continues.

Assessment Summary – Preliminary Findings Overview

Our assessment highlights repeated non-compliance by SF Environment employees with ethics rules designed to eliminate real and perceived risks of pay-to-play relationships. From our review and investigation, many of these issues pre-date SF Environment Director Deborah Raphael but have continued during her tenure. Taken together, we find that they reflect a long-standing poor ethical climate, deficient management decision-making, and a weak “tone from the top” regarding the importance of city ethics rules.

This report also makes the following findings about specific conduct that rises to a **level of concern**:

- Director Raphael solicited funds from Recology shortly before signing contracts with Recology in both 2015 (Landfill Disposal Agreement) and again in 2019 (Household Hazardous Waste Agreement).
- Department management did not disclose the receipt (and return) of a check for \$6,400 from Recology in mid-2020 after the arrest of former Public Works Director Mohammed Nuru and after Mayor Breed’s [Executive Directive 20-01](#) requiring city employees to cooperate with this joint investigation.
- Department management narrowly interpreted document requests from the City Attorney in 2021 and did not produce pages of spreadsheets that would have revealed Recology’s 2015 donation of \$25,000 for the Earth Day Breakfast and the U.S. Conference of Mayors.

Regardless of whether these acts ultimately influenced contract award decisions, they undermine public trust in the department’s decisions, create the appearance of a company making gifts to favorably influence department decisions that would directly benefit them, increase fraud risk, and reflect poor management decision-making.

Assessment Summary – Preliminary Findings

- **SF Environment’s role in the current refuse rate process is substantial yet not well defined in policy or law.**

In 2016 former Director Mohammed Nuru created [Public Works’ Rules of Procedure for the Adjustment of Refuse Collection and Disposal Rates](#). It identifies SF Environment as a participant in rate board proceedings and provides that Public Works will seek the assistance of SF Environment in processing rate adjustment applications. The Public Works Order creating this policy does not further describe or define SF Environment’s role in the rate setting process.

SF Environment employees viewed their role in the rate setting process as advisory and related primarily to zero waste goals. Although the zero waste manager received and reviewed Recology’s quarterly and annual reports, including profits and expenses, SF Environment employees viewed the responsibility for setting just and reasonable rates as resting solely with Public Works.

SF Environment employees did not solicit support from Recology for department events during refuse rate-setting years to avoid possible conflicts. Yet the director and some senior managers continued to accept gifts and meals from Recology during these periods.

Assessment Summary – Preliminary Findings

- **SF Environment employees regularly accepted gifts from Recology, a restricted source.**

Many SF Environment employees believed they could not or should not solicit donations for Earth Day from Recology only during the refuse rate process managed by Public Works. Despite this, several SF Environment senior managers, including the director, accepted gifts and meals from Recology in 2017, the year the last Refuse Rate Order was implemented. Other than the director and the deputy director, few SF Environment employees received ethics training prior to 2021. Per interviews conducted by the Controller's Office and City Attorney's Office, SF Environment employees did not understand that Recology was a restricted source for the entire department. As a result, SF Environment employees regularly accepted non-cash gifts and meals from Recology worth more than \$25, in violation of the [Campaign and Governmental Conduct Code](#).

Regardless of training completed, city employees are required to comply with ethics laws and a lack of training or understanding of the rules does not generally absolve employees of their responsibility for ethics violations.

Assessment Summary – Preliminary Findings

- SF Environment did not proactively disclose Recology’s donations to *Friends of SF Environment*, as required by the Mayor’s Executive Directive 20-01.

Former Director of Public Works Mohammed Nuru was arrested in late January 2020 on charges related to public corruption. On February 4, 2020, Mayor Breed signed [Executive Directive 20-01](#) requiring all city employees to “cooperate to the fullest extent and with the utmost urgency” with the joint investigation of the City Attorney and the Controller. The Mayor’s directive further provided that all city employees and departments should “proactively share any information that they believe could be helpful to the investigation.”

SF Environment did not proactively share information about Recology donations to *Friends of SF Environment* for more than a year and a half after the Mayor’s Executive Directive and only after direct requests for documents from the Controller and City Attorney.

Assessment Summary – Preliminary Findings

- **Recology donated to SF Environment’s Earth Day event through the department’s affiliated non-city organization, *Friends of SF Environment*.**

SF Environment routinely solicited donations from outside businesses for the department’s Earth Day event. Most donations were managed through a city gift fund, appropriately disclosed on the department’s website, and approved by the Board of Supervisors if greater than \$10,000. In 2015, however, Recology gifted \$25,000 for the Earth Day events to *Friends of SF Environment*. SF Environment did not disclose this donation on its website and did not obtain approval by the Board of Supervisors. But because Recology made the donation through its *Friends of* organization, it is unclear whether SF Environment was then required to disclose the donation and obtain Board approval. To date, not all of that money has been spent.

Although not clearly required at the time, SF Environment disclosed on its website a \$6,400 gift from Recology to *Friends of SF Environment* for the 2019 Earth Day event. Assuming payment to the non-profit was a gift to the department, the disclosure was inadequate, because it failed to fully disclose Recology’s financial interests in the City in violation of [Section 67.29-6 of the Sunshine Ordinance](#).^{*} At the same time as this partial disclosure, SF Environment did not disclose \$1,100 in wine that Recology also donated for the 2019 Earth Day event.^{*}

^{*} [San Francisco Environment’s Fiscal Year 2018-2019 Form 801 disclosure](#), last accessed March 22, 2022.

Assessment Summary – Preliminary Findings

- Senior management narrowly construed document requests, resulting in withholding information about Recology's \$25,000 donation.

During a directed interview of an SF Environment employee in late September 2021, investigators first learned that *Friends of SF Environment* had received a check (later determined to be in the amount of \$6,400) from Recology in 2020, well after Mr. Nuru's arrest, and that the money had been returned to Recology. The City Attorney and Controller then began requesting documentation from the department related to fundraising for SF Environment events going back to January 1, 2015.

As described in more detail below, the department narrowly construed the document requests based on what they said was a literal interpretation and did not initially produce pages of certain spreadsheets that would have revealed Recology's \$25,000 donation in 2015. Only after being pressed for complete documents did the department provide records related to the \$25,000 donation to *Friends of SF Environment*. Although not clearly required at that time, the \$25,000 had not been disclosed previously on the department's website or approved by the Board of Supervisors.

Assessment Summary – Preliminary Findings

- **Director Raphael solicited donations from Recology shortly before signing contracts with Recology in both 2015 and 2019.**

Despite Director Raphael's regular completion of ethics training from her appointment in 2014 through 2020, she solicited donations from Recology, a restricted source, around the time of contract finalization and negotiations and signing of both the Household Hazardous Waste Agreement (and its subsequent amendment) and the Landfill Disposal Agreement with Recology. Since 2014, ethics training for department heads has included the restricted source rule. At the time training only covered receiving personal gifts from restricted sources. However, irrespective of training received, Director Raphael should have been on notice of the appearance of impropriety and sought advice from the City Attorney.

The following slide shows a timeline depicting these solicitations, the limited duration of the refuse rate-setting process, and the continued involvement of SF Environment in recommending regular disbursements of zero waste incentive funding (all of which was approved by Public works) from 2014 through 2021.

Assessment Summary – Preliminary Findings

- Director Raphael solicited donations from Recology shortly before signing contracts with Recology in both 2015 and 2019. *(continued)*

| 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | 2021 |
|---|---|---|---|---|---|---|------|
|  6/2/2014 |  3/5/2015 | | Refuse Rate Setting Process | |  3/8/2019 |  2/3/2020 | |
|  | 6/2/2014: D. Raphael signs Household Hazardous Waste Agreement | | | | | | |
| Household Hazardous Waste Agreement | | | | | | | |
| |  | 7/22/2015: D. Raphael signs Landfill Disposal Agreement | | | | | |
| Landfill Disposal Agreement | | | | | | | |
| | | | | |  | 3/27/2019: D. Raphael signs amendment | |
| | | | | | | Household Hazardous Waste Agreement | |
| SF Environment recommended release of zero waste incentive funding annually | | | | | | | |
|  | |  |  |  |  |  | |

 D. Raphael appointed as Director of SF Environment

 D. Raphael attends ethics training

 D. Raphael solicits donations from Recology

Assessment Background & Findings

Federal Criminal Charges Alleging Public Corruption Prompted Joint Controller/City Attorney Investigation

In January 2020 former Public Works Director Mohammed Nuru was criminally charged with a scheme to defraud the City of his honest services by providing official action in exchange for bribes. In response to those criminal charges, the City Attorney and Controller launched a joint investigation into public corruption identified in the criminal complaint. While the City Attorney focused on employee and contractor wrongdoing across multiple departments, the Controller undertook a Public Integrity review of city contracts, purchase orders, and grants to identify red flags possibly indicating process failures. The Controller also created a Public Integrity Tip Line to facilitate the anonymous reporting of any information regarding the joint Public Integrity investigation.

The Controller issued three preliminary assessments in coordination with the City Attorney relevant to this report:

- [San Francisco Public Works Contracting](#) *(June 29, 2020)*
- [Gifts to Departments Through Non-City Organizations Lack Transparency and Create “Pay-to-Play” Risk](#) *(September 24, 2020)*
- [Refuse Rate-Setting Process Lacks Transparency and Timely Safeguards](#) *(April 14, 2021)*

Background on Recology

Recology is a privately held waste management company headquartered in San Francisco that provides refuse services to residential and commercial customers in San Francisco and other municipalities in multiple states. The company operates in the City through three entities: Recology San Francisco, Recology Sunset Scavenger, and Recology Golden Gate (Recology).

Until he was criminally charged in April 2021, **John Porter** was Vice President and General Manager of Recology. Prior to 2018, Mr. Porter was the Controller for Recology. **Paul Giusti** was Government and Community Relations Manager for Recology from 2012 to 2020. In this role, Mr. Giusti served as Recology's liaison to elected officials, city departments, and community organizations.

Both Mr. Porter and Mr. Giusti were charged with theft of honest services fraud and money laundering for bribing Mr. Nuru in exchange for official action. The criminal charges were based in part on payments of more than \$1 million to Mr. Nuru through multiple non-profit organizations for city-sponsored events, like Giant Sweep and an annual Public Works/General Services Agency holiday party. Mr. Giusti pled guilty to theft of honest services fraud in July 2021 and is cooperating with the federal corruption probe.

Background on Recology Settlement with the City Attorney and United States Attorney's Office

On March 4, 2021, the City Attorney announced **a civil settlement with Recology worth more than \$100 million**. The settlement, approved by the Board of Supervisors and Mayor, required refunds to ratepayers based on errors in Recology's 2017 rate application. The errors related to revenues collected by Recology but earmarked for the Impound Account and Zero Waste Incentive Fund (both discussed below). These revenues were incorrectly counted as Recology expenses, resulting in approval of a rate increase of 14 percent instead of 7 percent. The settlement also resulted in lower rates effective April 1, 2021. In addition to more than \$93 million in restitution with interest to ratepayers, the settlement required Recology to pay a \$7 million civil penalty.

On September 9, 2021, Recology entered a deferred prosecution agreement with the United States Attorney's Office in which it admitted to bribing Mr. Nuru and agreed to pay \$36 million in criminal fines (offset by the \$7 million in civil penalties paid to the City). Recology admitted to funneling more than \$150,000 a year to Public Works through non-city organizations "to obtain Nuru's official assistance with [Recology's] business."

Recology's settlement with the City also prohibits Recology from making any gifts to any city employee, officer, or department or from making any behested payment, through June 30, 2025.

Background and Oversight of SF Environment

SF Environment¹ was created by an amendment to the City Charter in 1996-97 to manage environmental programs and duties as enumerated in the San Francisco Environment Code. These responsibilities include zero waste,² public information and outreach, toxics reduction, environmental justice, and clean energy efforts. Its mission is to advance climate protection and enhance the quality of life for San Franciscans.

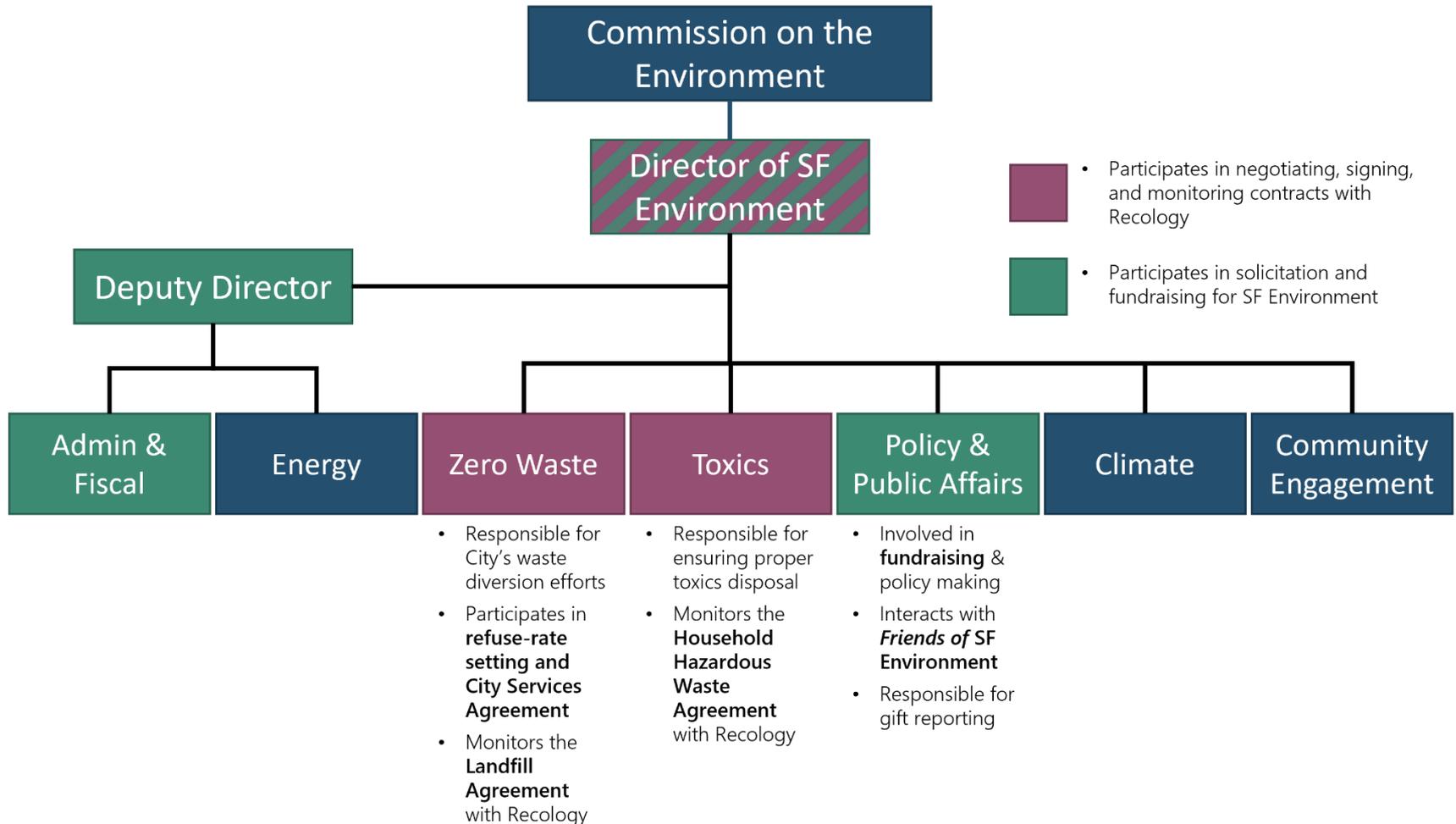
The Commission on the Environment³ is a seven-member mayoral appointed Commission created by City Charter Section 4.118. Its members serve a term of four years. Except for policies regarding building and land use, the Commission has authority to set policies and directives, and make recommendations on any proposed city policy involving environmental sustainability. It sets policy for SF Environment and advises the Mayor and Board of Supervisors on environmental issues.

¹ San Francisco Charter, Section 4.132

² According to [SF Environment](#), zero waste is defined as a goal for products to be designed and used in alignment with the waste reduction hierarchy (prevent waste, reduce and reuse first, then recycle and compost) and the highest and best use principle, so no material goes to landfill or high-temperature destruction.

³ San Francisco Charter, Section 4.118

SF Environment's Programs Involvement in Solicitation, Fundraising and Contract Monitoring



SF Environment's Budget is Partly Funded By Rate-Payer Funds Collected by Recology

The City established the **Solid Waste Impound Account** (Impound Account) in 1978 through authority provided in the 1932 Refuse Collection and Disposal Initiative Rate Ordinance to fund City-run programs related to waste collection, disposal, and diversion. SF Environment acquired responsibility for part of the account from the City Administrator in 2001.

Funding levels for the Impound Account are determined during the refuse collection rate-setting process conducted by Public Works. In general, the Impound Account funds the costs of operating and administering the City's solid waste management programs. The funds are collected by Recology and placed in a City account held by SF Environment for use by Public Works and SF Environment, as approved in the Refuse Rate Order set by the Public Works Director. SF Environment's final budget (including funds from approved refuse rates) is reviewed by the Commission on the Environment and approved by the Board of Supervisors and Mayor as part of the City's annual budget process.

The Impound Account Funds Almost Half of SF Environment's Budget

The Impound Account is SF Environment's primary funding source, representing 56 percent (\$12.6 million) of its \$22.4 million budget in fiscal year 2020-21. From fiscal year 2017-18 through fiscal year 2020-21, the Impound Account ranged from 42 percent to 56 percent of SF Environment's annual budget.

| Revenue Source | FY 2017-18 | | FY 2018-19 | | FY 2019-20 | | FY 2020-21 | |
|------------------------|---------------------|-------------|---------------------|-------------|---------------------|-------------|---------------------|-------------|
| | \$ | % | \$ | % | \$ | % | \$ | % |
| Impound Account | \$12,560,108 | 45% | \$11,735,534 | 42% | \$12,042,981 | 49% | \$12,603,478 | 56% |
| Grants | 6,295,626 | 23% | 7,306,714 | 26% | 5,964,859 | 25% | 2,572,583 | 12% |
| Fees | 5,087,457 | 18% | 5,111,325 | 19% | 4,234,713 | 17% | 4,519,824 | 20% |
| Other Revenue Sources* | 3,742,841 | 14% | 3,711,523 | 13% | 2,172,980 | 9% | 2,655,358 | 12% |
| Total | \$27,686,032 | 100% | \$27,865,096 | 100% | \$24,415,533 | 100% | \$22,351,243 | 100% |

*Note: Other Revenue Sources includes work order revenue or gift funding received for Earth Day events.

SF Environment's Role in the Refuse Rate-Setting Process

Preliminary Finding: SF Environment is defined as a participant in the rate process under a 2016 Public Works Order signed by Mr. Nuru. The department's role has evolved in practice but is not clearly defined in policy or law.

As discussed in our April 2021 assessment, the City's Refuse Ordinance¹ created a refuse collection structure where, over time, Recology became San Francisco's sole refuse collector. Recology, the City, or ratepayers can apply for a refuse rate adjustment in a public process pursuant to Public Works' Order No: 185078 ("Public Works' Order").²

The Public Works Order provides that:

- Public Works will seek the assistance of SF Environment staff in carrying out its responsibilities and processing the rate adjustment application; and
- SF Environment is a participant in the Rate Board proceedings if there is an objection to the Public Works' director's Rate Order;

The Public Works' Order provides no further information about SF Environment's role.

¹ [San Francisco Administrative Code, Appendix 1 \(Adopted, 1932; amended, 1946; 1954; 1960\).](#)

² [DPW Order No: 185078 \(July 11, 2016\): Rules of Procedure Refuse Collection and Disposal Rate Hearings.](#)

SF Environment's Role in the Refuse Rate-Setting Process

(continued)

| Event | Role of SF Environment |
|--|---|
| BEFORE REFUSE-RATE SETTING PROCESS | |
| Draft Rate Adjustment Application | <ul style="list-style-type: none"> • Reviews draft rate adjustment application, requests clarification often resulting in exhibits to final application. • Submits a budget for SF Environment activities to be funded by the Impound Account and to be included as part of the final rate application. |
| DURING REFUSE RATE-SETTING PROCESS | |
| Evaluation of the Rate Adjustment Application | <ul style="list-style-type: none"> • Evaluates the final rate adjustment application with Public Works, including tipping fees and zero waste incentive targets; participates in hearings and provides feedback on the Public Works Director's report on the rate adjustment application. |
| AFTER REFUSE RATE-SETTING PROCESS | |
| Incentive Funding | <ul style="list-style-type: none"> • Evaluates whether Recology meets its zero waste incentive targets (Tier 1 & 2) and is eligible for incentive funding and whether to approve the use of incentive funds for diversion projects (if Tiers 3 & 4 not met). |
| Monitoring Compliance with the Rate Order | <ul style="list-style-type: none"> • Reviews Recology's quarterly and annual reports submitted to Public Works, to ensure compliance with the Rate Order and that zero waste goals are being met. |

SF Environment's Role in the Refuse Rate-Setting Process

(continued)

Preliminary Finding: Public Works and SF Environment participate in the rate-setting process and receive funding in their budgets from rate-payers as approved through the rate-setting process.

The Controller's [April 2021 assessment](#) found that the Public Works director has significant influence over the City's refuse rate-setting process. Although Public Works is the lead administrator of the refuse rate process, SF Environment is involved in important aspects of the process. Both departments receive funding from rate-payers via the Impound Account as a result of the rate process.

The Controller's April 2021 assessment recommended the codification of roles for and oversight of the refuse rate-setting process, review of whether the City's arrangement with Recology continues to provide optimal benefits to ratepayers, and inclusion of additional internal controls in any revisions to the rate-setting process. After September 2021, Supervisor Aaron Peskin and the Mayor's Office formed a working group to explore alternatives and reforms to the refuse rate-setting process.

Recology is a Restricted Source for SF Environment

Preliminary Finding: Recology is a restricted source for SF Environment employees.

City officers and employees **may not solicit or accept gifts** from a person who they know or have reason to know is a restricted source.¹

A **restricted source** is a person (defined by regulation to include a company):

- Doing business with or seeking to do business with the public official's department; or
- Who during the previous 12 months knowingly attempted to influence the public official in any legislative or administrative action.

Recology is a **restricted source** because it is "doing business" with and has been seeking to do business with SF Environment since at least 2014. SF Environment employees may not solicit or accept gifts from Recology but may accept non-cash gifts worth \$25 or less up to four times per year.²

¹ San Francisco Campaign & Governmental Conduct Code, Section 3.216(b)(1).

² San Francisco Ethics Commission Regulations 3.216(b)-5; see also SF Environment's Statement of Incompatible Activities (2021).

Recology is a Restricted Source for SF Environment *(continued)*

SF Environment is an active participant, negotiator and/or signatory on multiple contracts with Recology.

| Contract | Purpose of Contract |
|---|---|
| Landfill Disposal Agreement | Governs transportation and disposal of refuse designated for landfill. Per the agreement, all refuse from San Francisco must be sent to a landfill owned and operated by Recology. It is signed by SF Environment's Director. |
| Household Hazardous Waste Collection Program Agreement | Disposal of household hazardous waste in the City in compliance with state regulations. It is signed by SF Environment's Director. |
| City Services Agreement for Collection of City Refuse | Sets the City's cost for its own refuse collection by Recology. The contract is with the Office of Contract Administration and is signed by the City Administrator. |

SF Environment's Lax Tone at the Top Resulted In Violations of Ethics and Disclosure Rules Designed to Maintain Public Trust

Preliminary Finding: Director Raphael asserted a lack of understanding of ethics rules despite a number of ethics trainings, and she did not prioritize the importance of ethics rules. Her delegation of compliance with ethics and disclosure requirements to subordinates who had never received ethics training resulted in wide-spread violations of the restricted source rule by SF Environment employees. These rules are intended to reduce the actual and apparent risk that interested parties have undue influence over government decision-making and play a critical role in maintaining public trust.

Compliance with ethics rules must start at the top. As discussed in our first and seventh reports,¹ **tone at the top** refers to the ethical atmosphere that is created in the workplace by the organization's leadership.² **Failure to maintain such a workplace culture can result in the pressure, rationalization, and ability to carry out ethical violations.** When this is the case, staff feels it has no obligation to protect the organization.²

¹ See [San Francisco Public Works Contracting](#); [Department of Building Inspection's Permitting and Inspection Processes](#).

² "[Tone at the Top: How Management Can Prevent Fraud in the Workplace](#)," ACFE; "[Tone at the Top Conveying Responsibility and Accountability](#)," ACFE, Suzanne Mahadeo.

Background Regarding SF Environment Programs

Zero Waste Program: In response to city legislation to achieve zero waste, SF Environment created this program as early as 2003, and it represents a primary focus of the department's activities. This program's employees create zero waste policies and have responsibilities related to the refuse rate-setting process, the Landfill Disposal Agreement, and the City Services Agreement with Recology. Zero waste employees also evaluate whether Recology has met landfill diversion targets outlined in the Refuse Rate Order, and they advise Public Works in determining whether Recology is eligible to receive different levels of zero waste incentive fund disbursements.

Toxics Reduction & Health Ecosystems Program: This program was created by SF Environment to ensure proper toxics disposal and to promote the replacement of toxics with safer alternatives.² This program's employees serve as subject matter experts for the Office of Contract Administration in hazardous materials and green purchasing contracts. Department staff in this program also negotiate and manage the Household Hazardous Waste Collection Program Agreement with Recology and ensure Recology's compliance with state hazardous waste regulations.

¹ "[Policies Related to Zero Waste](#)," SF Environment's website, last accessed, Jan. 25, 2022.

² "[Guiding Environmental Principles](#)," SF Environment's website, last accessed, Jan. 25, 2022.

SF Environment Employees With Contracting or Purchasing Responsibilities Did Not Receive Mandatory Ethics Training

Preliminary Finding: Despite a mandatory directive from the Department of Human Resources on June 23, 2016, and every year thereafter, SF Environment did not require departmental staff who had responsibilities for contracting and/or purchasing to take mandatory ethics training.

- Beginning at least in June 2016, the former Human Resources Director issued a directive to deputy directors and employees deemed to have contracting responsibilities to complete mandatory Ethics and Sunshine Online Training on a biennial basis. This requirement applied to the deputy director of SF Environment and some senior managers who had contracting responsibilities.
- Some SF Environment senior managers recall previous informal discussions regarding ethics training, but none could provide records of formal training other than the director and deputy director, who received ethics training prior to 2021.
- According to SF Environment, as of December 31, 2021, all SF Environment staff not currently on leave completed ethics training, and ethics training will now be part of the department's staff onboarding process.

SF Environment Employees Regularly Accepted Gifts from Recology

Preliminary Finding: SF Environment employees regularly accepted gifts from Recology, a restricted source, in violation of the Campaign and Governmental Conduct Code.

Based on interviews with SF Environment management, it was common practice to accept meals from Recology. Some SF Environment employees, including the director, confirmed they attended formal dinner events at no cost to the employee or the department from Recology.

All SF Environment employees interviewed recognized potential conflicts in receiving gifts or accepting meals from Recology during the refuse rate process. Some also understood that they should not accept gifts from Recology when they themselves were negotiating the Landfill Disposal Agreement or the Household Hazardous Waste Agreement. Few, however, acknowledged understanding that Recology was a restricted source for all employees during periods other than the refuse rate process because of Recology's contracts with the department.

Regardless of training completed, city employees are required to comply with ethics laws and a lack of training or understanding of the rules does not generally absolve employees of their responsibility for ethics violations.

Background on *Friends of SF Environment*

Friends of SF Environment is a non-city organization created in 2012 with the stated purpose of “raising funds for and increasing awareness of the Department of Environment’s work.” The organization is not an official 501(c)(3) non-profit entity and instead operates through its fiscal sponsor, Community Initiatives, which is a 501(c)(3) non-profit entity. Although *Friends of SF Environment* has a nominal board, it was wholly controlled by the department.

- **SF Environment employees had signature authority for *Friends of SF Environment*.** An Advisory Committee of at least three members make collective decisions on behalf of the *Friends of* organization. Since its inception through the end of 2018, at least one full-time SF Environment employee has served on the Advisory Committee and acted as a signatory for the *Friends of* organization.
- ***Friends of SF Environment* is controlled by SF Environment employees.** Department employees direct both fundraising for and expenditures from this *Friends of* account. For example, SF Environment solicited donations for Earth Day and directed some donations be deposited at the *Friends of* account. SF Environment then requested reimbursement for SF Environment employees’ training, activities and other events from *Friends of SF Environment*.

SF Environment Does Not Have a Memorandum of Understanding With its *Friends of Organization*

Preliminary Finding: SF Environment has not entered into a memorandum of understanding (MOU) with *Friends of SF Environment* despite the Mayor's executive directive in September 2020.

Our second report on [Non-City Organizations](#) indicated a lack of transparency in the relationship between *Friends of* organizations and departments. On September 24, 2020, Mayor Breed issued [Executive Directive 20-02](#) requiring all departments to formalize through a MOU any relationship the department has with a non-city organization that receives donations on behalf of the department.*

SF Environment does not have an MOU with *Friends of SF Environment*, more than a year and a half after the Mayor's directive. Interviews with SF Environment employees indicate that the department intends to dissolve its *Friends of* group, but it has not been dissolved to date. These efforts have likely been complicated by the fact that funds from Recology remain in the fiscal sponsor's account.

* [Executive Directive 20-02, Compliance with Gift Regulations and Increasing Transparency in City Department relationships with Non-City Organizations](#), September 24, 2020, Mayor London Breed.

The Director Accepted Gifts From Recology

Preliminary Finding: SF Environment's director received gifts from Recology, a restricted source.

Director Raphael assumed office as the Executive Director of SF Environment on June 2, 2014, and had previously been with the department for more than 20 years prior to her appointment. Beginning in calendar year 2014, Director Raphael was required to disclose financial interests on her publicly filed Form 700s and complete ethics training every other year until 2018 and then annually from 2018 to 2021. Under the restricted source rule, Director Raphael may not solicit or accept gifts from Recology but may accept non-cash gifts worth \$25 or less up to four times per year.

- On August 3, 2021, after the City Attorney began investigating whether her subordinates accepted gifts from Recology, Director Raphael filed amended Form 700s for calendar years 2017 to 2019 to reflect two reimbursements to Recology (a delay of 2 to 3 years) and a previously unreported gift of \$25 from Recology in 2019.

The Director Accepted Gifts From Recology *(continued)*

Although Director Raphael reimbursed Recology the value of the 2017 and 2018 gifts in calendar year 2021 and reported the reimbursements in an Amended Form 700 filing, she should not have accepted gifts from Recology because it was then and still is a restricted source. She also reported a previously unreported gift from Recology in 2019. The table below summarizes amendments Director Raphael made on August 3, 2021, to her 2017-2019 filings regarding gifts from Recology:

| Calendar Year | Gifts | Reported Amount | Reimbursed to Recology | Revised Reported Amount |
|---------------|--|-------------------------|-------------------------|-------------------------|
| 2017 | Ticket to 3rd Annual Women in Leadership Forum | \$60 | \$35 | \$25 |
| 2018 | Greenbelt Alliance Annual Gala | \$150 | \$125 | \$25 |
| 2019 | Dinner at Recology's Office | Not originally reported | Not originally reported | \$25 |

The Director Accepted Gifts From *Friends of SF Environment* in Excess of the Annual Gift Limit of \$470

The table below summarizes gifts that Director Raphael reported receiving from Community Initiatives (the fiscal sponsor for *Friends of SF Environment*) for calendar years 2017 through 2020. She accepted gifts in excess of the annual gift limit in 2017 and 2018 of \$470 from a single source.

| Year | Gifts from Community Initiatives | Annual Total |
|------|---|--------------|
| 2017 | <ul style="list-style-type: none"> • Silver Spur Luncheon Ticket • SF Interfaith Council Ticket • Convention on the Elimination of All Forms of Discrimination against Women's Award Ceremony Ticket • Brower Youth Awards Ticket • Annual Celebration for Black American History (CBAH) Dinner Ticket | \$860 |
| 2018 | <ul style="list-style-type: none"> • Regeneration Project Event Ticket • SF Interfaith Council Breakfast Ticket • Global Climate Action Summit Reception Expenses | \$597 |
| 2019 | <ul style="list-style-type: none"> • Interfaith Thanksgiving Breakfast • Brower Youth Awards Ticket • Annual CBAH Luncheon Ticket | \$415 |
| 2020 | <ul style="list-style-type: none"> • Gender Inclusion Pins for Staff • CBAH Luncheon • City Beat Breakfast Ticket | \$215 |

Director Raphael Solicited Donations for Earth Day From Former Recology Employees John Porter and Paul Giusti

Preliminary Finding: Director Raphael solicited donations from Recology for Earth Day in 2015, 2019, and 2020. She signed contracts with Recology in 2015 and 2019, within weeks or months after soliciting from Recology in those years. While these solicitations were not prohibited by the ethics rules in place at that time, the director's solicitation of funds shortly before signing a contract with Recology undermines public trust in the independence of her decision-making and at a minimum creates the appearance of undue influence.

SF Environment solicited donations each year in support of the annual Earth Day event hosted by the department. Documents produced by SF Environment show that Director Raphael solicited funds from Recology for Earth Day events in 2015, 2019, and 2020, despite SF Environment's role in regulatory and contracting decisions impacting Recology's business. Her solicitations were directed to former Recology employees John Porter and Paul Giusti. In an email to Director Raphael in March 2015, Mr. Giusti described Recology's support as a "business development opportunity." This correspondence supports a finding that Recology intended to influence Director Raphael's official decision-making power. Although the general goal of fundraising for the Earth Day event was appropriate, she should have at least been suspicious of Recology's intent given the finalization of the Landfill Disposal Agreement.

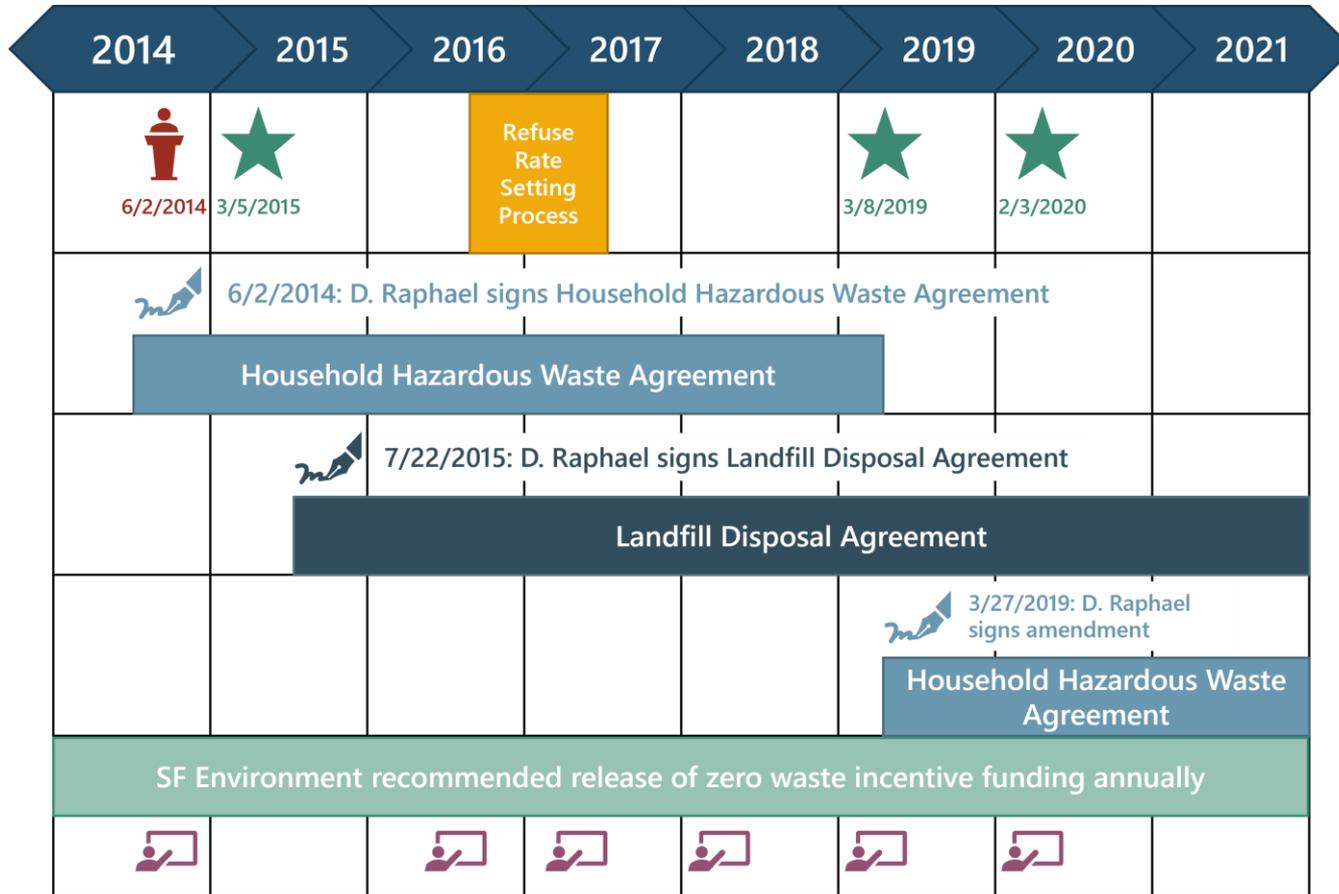
Recology's Donations for Earth Day Were Collected Through *Friends of SF Environment* in Contrast with the Vast Majority of Donations that SF Environment Collected for Earth Day in a City Gift Fund

The department received most donations for Earth Day into a City-held gift fund and regularly sought and obtained approval from the Board of Supervisors for gifts greater than \$10,000, as required by [San Francisco Administrative Code, Section 10.100-305](#).

SF Environment also had a practice of reporting gifts in support of Earth Day on its website, including the donor's name and any financial interest the donor had in the City, as required by [Section 67.29-6 of the Sunshine Ordinance](#).

The department did not report the \$25,000 from Recology in 2015 and it did not seek Board of Supervisor's approval. But because Recology made the donation through its *Friends of* organization, it is unclear whether SF Environment was then required to disclose the donation and obtain Board approval. Although SF Environment reported \$6,400 from Recology to *Friends of SF Environment* on its website in 2019, it did not report Recology's financial interest. This money was received by *Friends of SF Environment* in 2020, after Mr. Nuru's arrest, and returned at the department's insistence. Receipt of the \$6,400 in 2020 was not disclosed outside the department.

Director Raphael Solicited Donations From Recology Shortly Before Signing Contracts With Recology in Both 2015 and 2019



D. Raphael appointed as Director of SF Environment

D. Raphael attends ethics training

D. Raphael solicits donations from Recology

Soliciting an Interested Party Are Now Prohibited Under the City's New Law Effective January 2022

[Legislation](#) passed by the Board of Supervisors effective in January 2022 now prohibits government employees from soliciting behested payments from interested parties.

This legislation also expanded the definition of "interested parties" to include "any City Contractor contracting with or seeking to contract with the designated employee's or officer's department, or any affiliate of such a City Contractor, except for any person providing a grant to the City or City department."

Recology Employees Participated in Hiring Panels

Preliminary Finding: On multiple occasions, Recology employees participated in hiring panels for the selection of SF Environment employees. Although this does not appear to have violated any law or policy, it creates an appearance of a conflict of interest and contributes to a perception of regulatory capture.

Based on information provided by SF Environment and the Department of Human Resources, two Recology employees served on at least six job recruitments in the last five years for positions ranging from assistant to senior coordinator. Most of these positions require some interaction with Recology and could contribute to contract oversight of Recology.

San Francisco Civil Service Rule 113.1.2 provides that selection of candidates cannot be based on non-merit based factors such as nepotism or favoritism. No City rule or policy, however, prohibits a restricted source or interested party from participating in hiring panels. The City has conflict disclosure forms for participation in evaluation panels for procurement, but no such disclosure form exists for panelists who participate in hiring decisions.

SF Environment Employees Charged Foreign Delegations for Tours and Directed Payments to *Friends of SF Environment*

Preliminary Finding: SF Environment employees improperly charged for tours of the City's waste management facilities and directed payments to a non-City account at *Friends of SF Environment*.

One source of revenue for *Friends of SF Environment* in later years came from payments made by foreign delegations for tours of Recology's facilities. Employees of SF Environment provided the tours to officials from other government agencies in exchange for payments to *Friends of SF Environment*.

City departments regularly budget and review their charges for service, permit fees and fines, and these charges must be authorized by the Board of Supervisors during the budget process or through standalone legislation during the remainder of the year. These sources of revenue for a department would then be recorded in the City's financial system. Other departments similarly charge fees for tours, such as Recreation and Park Department, which charges for tours at Coit Tower and the Conservatory of Flowers. Unlike the Recreation and Park Department, SF Environment neither sought approval to charge for these tours, nor did it ensure these funds were recorded in the City's financial system. Instead, this revenue was deposited in its *Friends of SF Environment* account.

SF Environment's Senior Management Did Not Proactively Disclose Information Relevant to this Joint Public Integrity Investigation

Preliminary Finding: Contrary to the Mayor's Executive Directive 20-01, Director Raphael and her senior management did not proactively share information about Recology's donations to *Friends of SF Environment*.

Mayor Breed's [Executive Directive 20-01](#) (February 4, 2020) mandated that all city employees and departments cooperate to the fullest extent and with the utmost urgency with any requests made by the City Attorney and the Controller. Despite numerous opportunities, SF Environment did not disclose Recology's payments to *Friends of SF Environment* for more than a year and a half, until witnesses were compelled to answer questions from investigators in late September 2021.

Any number of events should have triggered a recognition that this information was relevant to the joint Public Integrity investigation, including: (1) the Controller's February 7, 2020, request of all department heads for information about *Friends of* groups; (2) criminal charges made public in November 2020 against Paul Giusti; (3) Recology's civil settlement with the City in March 2021; (4) criminal charges made public in April 2021 against John Porter; (5) Paul Giusti's guilty plea in July 2021; and (6) Recology's admission to bribing Mr. Nuru in early September 2021 as part of its deferred prosecution agreement with the U.S. Attorney's Office.

Senior Management Narrowly Construed Document Requests, Resulting in Withholding Information About Recology's \$25,000 Donation

Preliminary Finding: SF Environment employees narrowly interpreted a request for documents from the City Attorney in such a way as to knowingly withhold from investigators records showing Recology's previously undisclosed gift of \$25,000 in 2015.

During a directed interview of an SF Environment employee in late September 2021, investigators first learned that *Friends of SF Environment* had received a check from Recology in 2020, well after Mr. Nuru's arrest, and that the money had been returned to Recology. The City Attorney and Controller then began requesting documentation from the department related to fundraising for SF Environment events going back to January 1, 2015.

As described in more detail below, the department did not produce pages of certain spreadsheets that would have revealed Recology's \$25,000 donation in 2015. Based on witness' statements of conversations at the time of the document production, it is apparent that the department understood that their initial production would not reveal the previously undisclosed donation of \$25,000. The department provided documents revealing the \$25,000 only after the City Attorney pressed for complete copies of the original records.

Senior Management Narrowly Construed Document Requests, Resulting in Withholding Information About Recology's \$25,000 Donation *(continued)*

Below is a timeline of the events that occurred in response to the City Attorney's requests.

| Date | Event |
|--------------------|--|
| September 30, 2021 | City Attorney investigators learn during a compelled witness interview that the department returned a \$6,400 check from Recology for Earth Day in mid-2020, after Mr. Nuru's arrest. Investigators also learn for the first time that SF Environment management regularly solicited donations from private parties and corporations for Earth Day events. |
| October 6, 2021 | City Attorney investigators request documents from a witness, but the witness stated they did not have direct access to the documents. |
| November 1, 2021 | City Attorney investigators redirect the request for documents to Director Raphael including "All copies of fundraising list used by SF Environment to solicit contributions to the Earth Day Fund (all iterations going back to January 1, 2015.)". |
| December 3, 2021 | The department produces 10 PDF documents in response to the request for fundraising lists. Each PDF document is a single page from a multi-page Excel spreadsheet. Recology is listed as a potential sponsor on one document but there is no reference to a donation. |
| December 10, 2021 | City Attorney investigators press for complete copies of the documents. |
| December 13, 2021 | The department produces 8 multi-page Excel spreadsheets from which the 10 single page PDF documents were culled. Three of the spreadsheets contain pages previously undisclosed that provide detailed descriptions of the \$25,000 donation by Recology in 2015. |

Assessment Recommendations

Recommendations

Given the findings of our preliminary assessment, we offer the following preliminary recommendations, which we may refine as the investigation and review continue and we consider the feedback we receive in the review process.

1. **The Commission on the Environment should ensure that SF Environment establishes a strong, ethical tone at the top, modeling the importance of compliance with ethics laws.**
2. **Policymakers should revise the refuse rate-setting process and procedures to clearly define SF Environment's roles, responsibilities, and involvement in the refuse rate-setting process.**
3. **Policymakers should consider codifying the Mayor's Executive Directive 20-02, requiring departments to formalize their relationships with their *Friends of*/non-city organization and defining key components of those agreements.**

Recommendations *(continued)*

SF Environment and all city departments should:

4. Proactively seek advice from the City Attorney's Office and the Ethics Commission when questions arise about city ethics rules and ensure full disclosure of relevant facts to facilitate accurate advice.
5. Comply with the Mayor's Executive Directive 20-01 and ensure it timely and proactively discloses information to both the City Attorney and Controller's Office.
6. Work with the City Attorney's Office to comply with Mayor's Executive Directive 20-02 and create a memorandum of understanding or ensure the closure of the *Friends of SF Environment* organization and appropriate disbursement of its remaining funds.

Recommendations *(continued)*

SF Environment and all city departments should:

7. Work with the Office of Contract Administration and the Department of Human Resources to designate employees who have contracting/purchasing responsibilities, including those who participate in contract negotiations and revisions, and to ensure all training requirements, including mandatory ethics training, are met.
8. Seek approval from the Board of Supervisors if the department wishes to charge fees for tours and ensure that this fee revenue is deposited and recorded in the City's financial system.

The Department of Human Resources should:

9. Consider requiring interview panelists to confirm that they have no conflicts of interest before participating in hiring panels and develop policies regarding these matters.

Completed and Upcoming Public Integrity Reporting

The Controller's 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:

- [San Francisco Public Works Contracting](#) (June 29, 2020)
- [Gifts to Departments Through Non-City Organizations Lack Transparency and Create "Pay-to-Play" Risk](#) (September 24, 2020)
- [San Francisco's Debarment Process](#) (November 5, 2020)
- [Ethical Standards for Contract Award Processes of the Airport Commission and Other Commissions and Boards](#) (January 11, 2021)
- [Refuse Rate-Setting Process Lacks Transparency and Timely Safeguards](#) (April 14, 2021)
- [12-Month Status on Public Integrity Recommendations](#) (August 4, 2021)
- [Department of Building Inspection's Permitting and Inspection Processes](#) (September 16, 2021)
- [The San Francisco Public Utilities Commission Social Impact Partnership Program Audit](#) (December 9, 2021)
- Review of Recology Refuse Rates
- Assessment of Recology's Landfill Disposal Agreement
- San Francisco Public Utilities Commission's Contracting and Procurement Processes
- Citywide Ethics Reporting
- 24-Month Status on Public Integrity Recommendations

Additional reviews and assessments may be performed as the investigation proceeds.

Any questions or comments?

Contact us at: ben.rosenfield@sfgov.org
todd.rydstrom@sfgov.org
mark.p.delarosa@sfgov.org