

File No. 201132

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Rules Committee

Date Sept. 13, 2021

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
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Completed by: Victor Young Date Sept. 9, 2021

Completed by: _____ Date _____

[Campaign and Governmental Conduct Code - Behested Payments]

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Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of interested party, to include City contractors and persons seeking to influence City officers and employees, and to prohibit appointed department heads, commissioners, and designated employees from soliciting behested payments from interested parties.

NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
Additions to Codes are in *single-underline italics Times New Roman font*.
Deletions to Codes are in *strikethrough italics Times New Roman font*.
Board amendment additions are in double-underlined Arial font.
Board amendment deletions are in ~~strikethrough Arial font~~.
Asterisks (* * * *) indicate the omission of unchanged Code subsections or parts of tables.

Be it ordained by the People of the City and County of San Francisco:

Section 1. The Campaign and Governmental Conduct Code is hereby amended by revising Sections 3.600, 3.610, 3.620, 3.630, and 3.640, and adding Section 3.605, to read as follows:

SEC. 3.600. DEFINITIONS.

Whenever in this Chapter 6 the following words or phrases are used, they shall have the following meanings:

“Affiliate” shall be defined as set forth in Section 1.126 of this Code.

“Agent” shall mean any person who represents a party in connection with a proceeding involving a license, permit, or other entitlement for use ~~be defined~~ as set forth in Title 2, Section 18438.3 of the California Code of Regulations, as amended from time to time.

1 “Appointed department head” shall mean any department head who is required to file a
2 Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code, except for the
3 Assessor-Recorder, City Attorney, District Attorney, Mayor, Public Defender, Sheriff, and Treasurer.

4 * * * *

5 “City Contractor” shall be defined as set forth in Section 1.126 of this Code, except only with
6 respect to contracts with any department of the City and County of San Francisco.

7 “Commissioner” shall mean any member of a City board or commission, excluding the Board
8 of Supervisors, who is required to file a Statement of Economic Interests as set forth in Section 3.1-
9 103(a)(1) of this Code.

10 * * * *

11 “Designated employee” shall mean any employee of the City and County of San Francisco
12 required to file a Statement of Economic Interests under Article III, Chapter 1 of this Code.

13 “Elected official” shall mean Assessor-Recorder, City Attorney, District Attorney, Mayor,
14 Public Defender, Sheriff, Treasurer, or member of the Board of Supervisors.

15 * * * *

16 “Interested party” shall mean:

17 (a) any party, participant or agent of a party or participant involved in a
18 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
19 use, before ~~an officer or any board or commission (including the Board of Supervisors) on which the~~
20 ~~officer sits~~ (1) an officer, (2) any board or commission (including the Board of Supervisors) on which
21 the officer sits, (3) the department of the officer, or (4) the department of the designated employee;

22 (b) any City Contractor contracting with or seeking to contract with the designated
23 employee’s or officer’s department, or any affiliate of such a City Contractor; or

24 (c) any person who attempted to influence the employee or officer in any legislative or
25 administrative action.

1 “License, permit, or other entitlement for use” shall mean professional, trade, or land use
2 licenses, permits, or other entitlements to use property or engage in business, including professional
3 license revocations, conditional use permits, rezoning of property parcels, zoning variances, tentative
4 subdivision and parcel maps, cable television franchises, building and development permits, private
5 development plans, and contracts (other than labor or personal employment contracts and
6 competitively bid contracts where the City is required to select the highest or lowest qualified bidder),
7 ~~be defined~~ as set forth in California Government Code Section 84308, as amended from time
8 to time.

9 “Officer” shall mean any commissioner, appointed department head, or elected official. ~~the~~
10 ~~Mayor, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, Public Defender, a~~
11 ~~Member of the Board of Supervisors, or any member of a board or commission who is required to file a~~
12 ~~Statement of Economic Interests, including all persons holding positions listed in Section 3.1-103(a)(1)~~
13 ~~of this Code.~~

14 ~~“Payment” shall mean a monetary payment or the delivery of goods or services.~~

15 “Participant” shall mean any person who is not a party but who actively supports or opposes
16 (by lobbying in person, testifying in person, or otherwise acting to influence) a particular decision in a
17 proceeding involving a license, permit, or other entitlement for use and who has a financial interest in
18 the decision. ~~be defined~~ as set forth in California Government Code Section 84308 and Title 2,
19 Section 18438.4 of the California Code of Regulations, as amended from time to time.

20 “Party” shall mean any person who files an application for, or is the subject of, a proceeding
21 involving a license, permit, or other entitlement for use. ~~be defined~~ as set forth in California
22 Government Code Section 84308, as amended from time to time.

23 ~~“Payment” shall mean a monetary payment or the delivery of goods or services.~~

24 ~~“Person” shall be defined as set forth in Section 1.104 of this Code.~~

25 * * * *

1 **SEC. 3.605. PROHIBITING APPOINTED DEPARTMENT HEADS, COMMISSIONERS,**
2 **AND DESIGNATED EMPLOYEES FROM SOLICITING BEHESTED PAYMENTS FROM**
3 **INTERESTED PARTIES.**

4 (a) **PROHIBITION.** *Appointed department heads, commissioners, and designated employees*
5 *shall not directly or indirectly solicit any behested payment from any interested party in the following*
6 *circumstances:*

7 (1) **Administrative proceedings.** *If the interested party is a party, participant, or agent*
8 *of a party or participant in a proceeding before the appointed department head's, commissioner's, or*
9 *designated employee's department regarding administrative enforcement, a license, a permit, or other*
10 *entitlement for use, the prohibition set forth in this subsection (a) shall apply:*

11 (A) *during the proceeding; and*

12 (B) *for six months following the date on which a final decision is rendered in the*
13 *proceeding.*

14 (2) **Contracts.** *If the interested party is a City Contractor, or an affiliate of a City*
15 *Contractor, who is a party to or is seeking a contract with the appointed department head's,*
16 *commissioner's, or designated employee's department, the prohibition set forth in this subsection (a)*
17 *shall apply from the submission of a proposal until the later of:*

18 (A) *the termination of negotiations for the contract; or*

19 (B) *the end of the contract's term.*

20 (3) **Persons seeking to influence.** *If the interested party is a person who attempted to*
21 *influence the appointed department head, commissioner, or designated employee in any legislative or*
22 *administrative action, the prohibition set forth in this subsection (a) shall apply for 12 months*
23 *following the date of each attempt to influence.*

24 (b) **EXCEPTIONS.**

1 (1) Elected department heads. This Section 3.605 shall not apply to elected department
2 heads.

3 (2) Public appeals. This Section 3.605 shall not apply to public appeals.

4 **SEC. 3.610. ~~REQUIRED~~ FILING OF BEHESTED PAYMENT REPORTS BY**
5 **ELECTED OFFICIALS.**

6 (a) **FILING REQUIREMENT.**

7 (1) Administrative proceedings. If an ~~officer~~ elected official directly or indirectly
8 requests or solicits any behested payment(s) from an interested party that is a party,
9 participant, or agent of a party or participant involved in a proceeding before the elected official's
10 department regarding administrative enforcement, a license, a permit, or other entitlement for use, the
11 ~~officer~~ elected official shall file ~~the a~~ behested payment report ~~described in subsection (b) with the~~
12 ~~Ethics Commission~~ in the following circumstances:

13 ~~(1) (A) if the interested party makes any behested payment(s) totaling~~
14 ~~\$1,000 or more during the pendency of the matter involving the interested party proceeding, or~~
15 ~~during the six months following the date on which a final decision is rendered, the officer shall file a~~
16 ~~behested payment report within 30 days of the date on which the behested payment was made, or if~~
17 ~~there has been a series of behested payments, within 30 days of the date on which the behested~~
18 ~~payment(s) total \$1,000 or more; or~~

19 ~~(2) if the interested party makes any behested payment(s) totaling \$1,000 or~~
20 ~~more during the six months following the date on which a final decision is rendered in the matter~~
21 ~~involving the interested party, the officer shall file a behested payment report within 30 days of the date~~
22 ~~on which the behested payment was made, or if there has been a series of behested payments, within 30~~
23 ~~days of the date on which the behested payment(s) total \$1,000 or more; and~~

24 ~~(3) (B) if the interested party made any behested payment(s) totaling~~
25 ~~\$1,000 or more in the 12 months prior to the commencement of a matter involving the interested~~

1 ~~party~~ proceeding, in which case the ~~officer~~ elected official shall file a behested payment report
2 within 30 days of the date the ~~officer~~ elected official knew or should have known that the source
3 of the behested payment(s) became an interested party.

4 (2) Contracts. If an elected official directly or indirectly requests or solicits any
5 behested payment(s) from any City Contractor contracting with or seeking to contract with the elected
6 official's department, or any affiliate of such City Contractor, the elected official shall file a behested
7 payment report in the following circumstances:

8 (A) the interested party makes any behested payment(s) totaling \$1,000 or more
9 after the submission of a proposal and before either the termination of negotiations for the contract or
10 the end of the contract's term;

11 (B) the interested party makes any behested payment(s) totaling \$1,000 or more
12 during the six months after either the termination of negotiations for the contract, or the end of the
13 contract's term; or

14 (C) the interested party made any behested payment(s) totaling \$1,000 or more
15 in the 12 months prior to the submission of a proposal, in which case the elected official shall file a
16 behested payment report within 30 days of the date the elected official knew or should have known that
17 the source of the behested payment(s) became an interested party.

18 (3) Persons seeking to influence. If an elected official directly or indirectly requests or
19 solicits any behested payment(s) from any interested party who attempted to influence the elected
20 official in any legislative or administrative action, the elected official shall file a behested payment
21 report if, within the 12 months following the date of any attempt by the interested party to influence the
22 elected official, the interested party made any behested payment(s) totaling \$1,000 or more.

23 (b) **BEHESTED PAYMENT REPORT.** The behested payment report shall include the
24 following:

25 (1) name of payor;

- 1 (2) address of payor;
- 2 (3) amount of the payment(s);
- 3 (4) date(s) the payment(s) were made;
- 4 (5) the name(s) and address(es) of the payee(s);
- 5 (6) a brief description of the goods or services provided or purchased, if any,
- 6 and a description of the specific purpose or event for which the payment(s) were made;
- 7 (7) if the ~~officer~~ elected official or the ~~officer's~~ elected official's relative, staff
- 8 member, or paid campaign staff, is an officer, executive, member of the board of directors,
- 9 staff member, or authorized agent for the recipient of the behested payment(s), such
- 10 individual's name, relation to the ~~officer~~ elected official, and position held with the payee;
- 11 (8) if the payee has created or distributed 200 or more substantially similar
- 12 communications featuring the ~~officer~~ elected official within the six months prior to the deadline
- 13 for filing the behested payment report, a brief description of such communication(s), the
- 14 purpose of the communication(s), the number of communication(s) distributed, and a copy of
- 15 the communication(s); and
- 16 (9) if in the six months following the deadline for filing the behested payment
- 17 report, the payee has created or distributed 200 or more substantially similar communications
- 18 featuring the ~~officer~~ elected official, the ~~officer~~ elected official shall file an amended payment
- 19 report that discloses a brief description of such communication(s), the purpose of the
- 20 communication(s), the number of communication(s) distributed, and a copy of the
- 21 communication(s).

22 **(c) DEADLINE FOR FILING A BEHESTED PAYMENT REPORT.** *Unless otherwise*

23 *provided under this Section 3.610, when an elected official is required to file a behested payment*

24 *report, the elected official shall file the behested payment report described in subsection (b) with the*

25 *Ethics Commission within 30 days of the date on which the behested payment was made, or if there has*

1 been a series of behested payments, within 30 days of the date on which the behested payments total
2 \$1,000 or more.

3 ~~(e)~~ (d) **AMENDMENTS.** If any of the information previously disclosed on a behested
4 payment report changes during the pendency of the matter involving the interested party, or
5 within six months of the final decision in such matter, the ~~officer~~ elected official shall file an
6 amended behested payment report.

7 ~~(d)~~ (e) **PUBLIC APPEALS.** Notwithstanding subsections (a) and (d), no ~~officer~~ elected
8 official shall be required to report any behested payment that is made solely in response to a
9 public appeal.

10 ~~(e)~~ (f) **NOTICE.** If an ~~officer~~ elected official solicits or otherwise requests, in any manner
11 other than a public appeal, that any person make a behested payment, the elected official or
12 ~~his~~ the elected official's agent must notify that person that if the person makes any behested
13 payment in response to the solicitation or request, the person may be subject to the disclosure
14 and notice requirements in Section 3.620.

15 ~~(f)~~ (g) **WEBSITE POSTING.** The Ethics Commission shall ~~make available through its~~
16 ~~website~~ post on its website all behested payment reports it receives from ~~officers~~ elected officials.

17 **SEC. 3.620. FILING BY DONORS.**

18 (a) **REPORT.** Any interested party who makes a behested payment, or series of
19 behested payments in a calendar year, of \$10,000 or more must disclose, within 30 days
20 following the date on which the payment(s) totals \$10,000 or more:

21 (1) Administrative proceedings. If the interested party is a party, participant, or agent
22 of a party or participant involved in a proceeding regarding administrative enforcement, a license, a
23 permit, or other entitlement for use:

1 (A) the proceeding(s) the interested party is or was involved in with the
2 board, commission or department of the elected official who requested or solicited the behested
3 payment(s);

4 (2) (B) the outcome(s) the interested party is or was seeking in such
5 proceedings before or decisions by the board, commission, or department of the elected official who
6 requested or solicited the behested payment(s); and

7 (3) (C) any contact(s) the interested party made in relation to such
8 proceedings before or decisions by the board, commission, or department of the elected official who
9 requested or solicited the behested payment(s).

10 (2) **Contracts.** If the interested party is a City Contractor, or an affiliate of a City
11 Contractor:

12 (A) the total value(s), description(s), and date(s) of the contract(s) with or
13 proposal(s) submitted to the board, commission, or department of the elected official who requested or
14 solicited the behested payment(s);

15 (B) the name(s) of the City Contractor(s) or affiliate(s), and the contracting City
16 department(s); and

17 (C) any contact(s) the interested party made in relation to the contract(s) with
18 or proposal(s) submitted to the board, commission, or department of the elected official who requested
19 or solicited the behested payment(s).

20 (3) **Persons seeking to influence.** If the interested party attempted to influence the
21 elected official in any legislative or administrative action:

22 (A) the legislative or administrative action(s) in which the interested party
23 attempted to influence the elected official;

24 (B) the outcome(s) the interested party is or was seeking in such legislative or
25 administrative action(s); and

1 (C) the dates of any contact(s) the interested party made with the elected official
2 in relation to such legislative or administrative action(s).

3 (b) **NOTICE.** Any person who makes a behested payment must notify the recipient
4 that the payment is a behested payment, at the time the payment is made.

5 (c) PUBLIC APPEALS. An interested party has no obligation to disclose a behested payment
6 made in response to an elected official's public appeal.

7 **SEC. 3.630. FILING BY RECIPIENTS OF MAJOR BEHESTED PAYMENTS.**

8 (a) **MAJOR BEHESTED PAYMENT REPORT.** Any person who receives a behested
9 payment, or a series of behested payments, ~~received~~ during a calendar year, totaling \$100,000
10 or more from interested parties that was made at the behest of any ~~officer~~ elected official must do
11 the following:

12 (1) within 30 days following the date on which the payment(s) total \$100,000 or
13 more, notify the Ethics Commission that the person has received such payment(s) and specify
14 the date on which the payment(s) equaled or exceeded \$100,000;

15 (2) within 13 months following the date on which the payment(s) or payments
16 total \$100,000 or more, but at least 12 months following the date on which the payment(s)
17 total \$100,000 or more, disclose:

18 ~~(i)~~ (A) all payments made by the person that were funded in whole or in
19 part by the behested payment(s) made at the behest of the ~~officer~~ elected official; and

20 ~~(ii)~~ (B) if the person was an interested party in any City decision(s)
21 involving the ~~officer~~ elected official in the 12 months following the date on which the payment(s)
22 were made:

23 ~~(A)~~ (i) the proceeding the person is or was involved in;

24 ~~(B)~~ (ii) the decision(s) the person actively supported or opposed;

25

1 ~~(C)~~ (iii) the outcome(s) the person is or was seeking in such
2 proceedings or decisions; and

3 ~~(D)~~ (iv) any contact(s) the person made in relation to such
4 proceedings or decisions.

5 (b) **EXCEPTION.** Subsection (a) does not apply if the entity receiving the behested
6 payment is a City department.

7 (c) **NOTICE REQUIRED.** If a recipient of a behested payment does not receive the
8 notice, as required under Section 3.620, that a particular payment is a behested payment, the
9 recipient will not be subject to penalties under Section 3.650, as regards that particular
10 payment, for failure to file pursuant to subsection (a) unless it is clear from the circumstances
11 that the recipient knew or should have known that the payment was made at the behest of an
12 ~~officer~~ elected official.

13 (d) **PUBLIC APPEALS.** A recipient of behested payments has no obligation to disclose
14 payments received due to an elected official’s public appeal.

15 **SEC. 3.640. REGULATIONS.**

16 (a) The Ethics Commission may adopt rules, regulations, and guidelines for the
17 implementation of this Chapter 6. The Ethics Commission shall adopt rules, regulations or
18 guidelines defining and illustrating “interested party” and when a payment is made “at the behest of”
19 a City officer or designated employee.

20 (b) The Ethics Commission may, by regulation, require persons to electronically submit
21 information required to fulfill their obligations under this Chapter 6.

22 Section 2. Effective Date. This ordinance shall become effective 30 days after
23 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
24 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
25 of Supervisors overrides the Mayor’s veto of the ordinance.

LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of interested party, to include City contractors and persons seeking to influence City officers and employees, and to prohibit appointed department heads, commissioners, and designated employees from soliciting behested payments from interested parties.

Existing Law

State law requires elected officials – but not City commissioners, department heads, or employees – to file “behested payment” reports when they solicit contributions of \$5,000 from a single source in a calendar year for legislative, governmental, or charitable purposes. Such reports must be filed with the Ethics Commission. See Cal. Gov. Code §§ 82004.5, 84224.

Local law additionally requires City commissioners and elected officials – but not appointed City department heads or employees – to file behested payment reports for solicitations of charitable contributions totaling \$1,000 or more from “interested parties” with certain matters before their commissions. These matters include proceedings regarding administrative enforcement, a license, a permit, or other entitlement for use before their boards and commissions. Commissioners and elected officials are required to file these reports when they solicit a behested payment from:

- a party, participant or agent of a party or participant in a proceeding while the matter is pending;
- a party, participant or agent of a party or participant in a proceeding during the six months following the date a final decision is rendered in the matter; and
- a party, participant or agent of a party or participant in the 12 months prior to the commencement of a proceeding, after the commissioner learns or should have learned that the source of the contribution became involved in a proceeding.

S.F. Campaign & Gov’tal Conduct Code § 3.610. These behested payment reports are not required for solicitations made through a “public appeal.” A “public appeal” is a broad request made through television, radio, billboards, a public message on an online platform, the distribution of 200 or more identical pieces of printed material, the distribution of a single email to 200 or more recipients, or a speech to a group of 20 or more individuals. S.F. Campaign & Gov’tal Conduct Code § 3.600.

Local law also requires the donors and recipients of such contributions to file additional reports. These reports must also be filed with the Ethics Commission. S.F. Campaign & Gov'tal Conduct Code §§ 3.620, 3.630.

Amendments to Current Law

The proposed legislation would expand “interested parties” to include:

- contractors and prospective contractors before an officer’s or employee’s department or commission; and
- persons who attempted to influence officers and employees in any legislative or administrative action.

The proposed legislation would prohibit appointed department heads, commissioners, and designated employees from soliciting any behested payments from interested parties with matters before their departments or commissions. For the purposes of this legislation, a “designated employee” is any City employee required to file a Statement of Economic Interests (Form 700) under Article III, Chapter 1 of the Campaign and Governmental Conduct Code. This prohibition would not apply to solicitations made through a “public appeal.”

Under this prohibition, appointed department heads, commissioners, and designated employees could not solicit behested payments:

- from contractors who are a party to or seeking a contract with their department, from the submission of a proposal until the later of the termination of negotiations for the contract or the end of the contract’s term;
- from persons who attempted to influence them in any legislative or administrative action, for 12 months following the date of each attempt to influence.

This prohibition on soliciting behested payments would not apply to elected officials, including elected department heads. But these elected officials would be required to file behested payment reports with the Ethics Commission regarding this fundraising, if the behested payments are solicited from interested parties with matters before their departments or boards. This reporting would not be required for solicitations made through a “public appeal.”

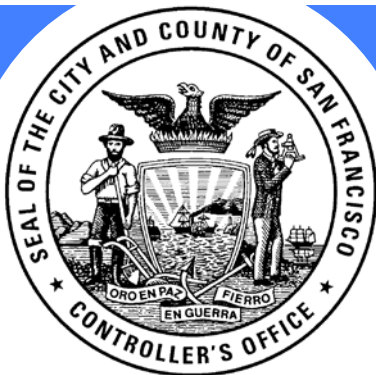
Background Information

The behested payment reports required by existing law are available on the Ethics Commission’s website: <https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer>.

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)*

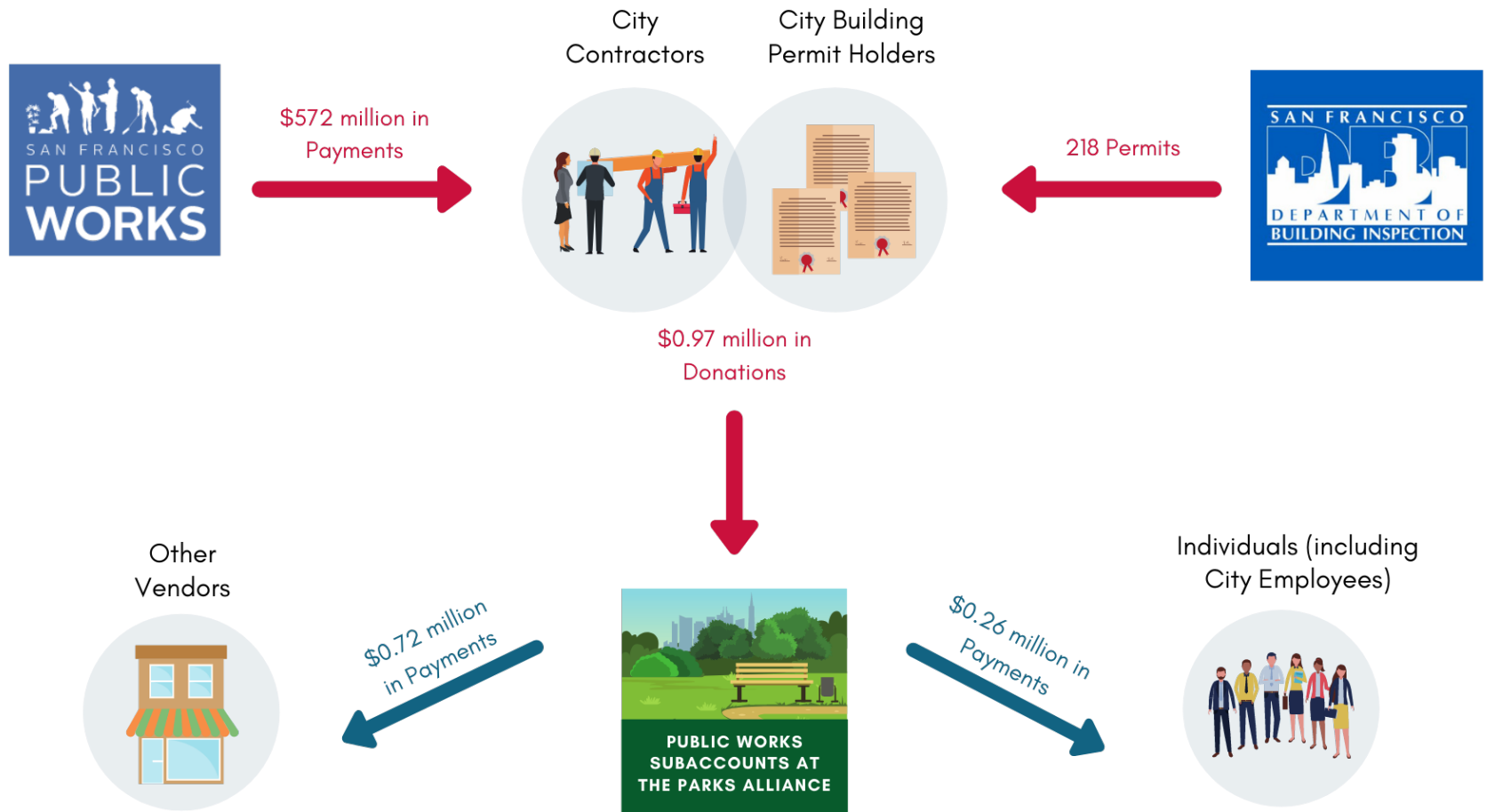
Preliminary Findings

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

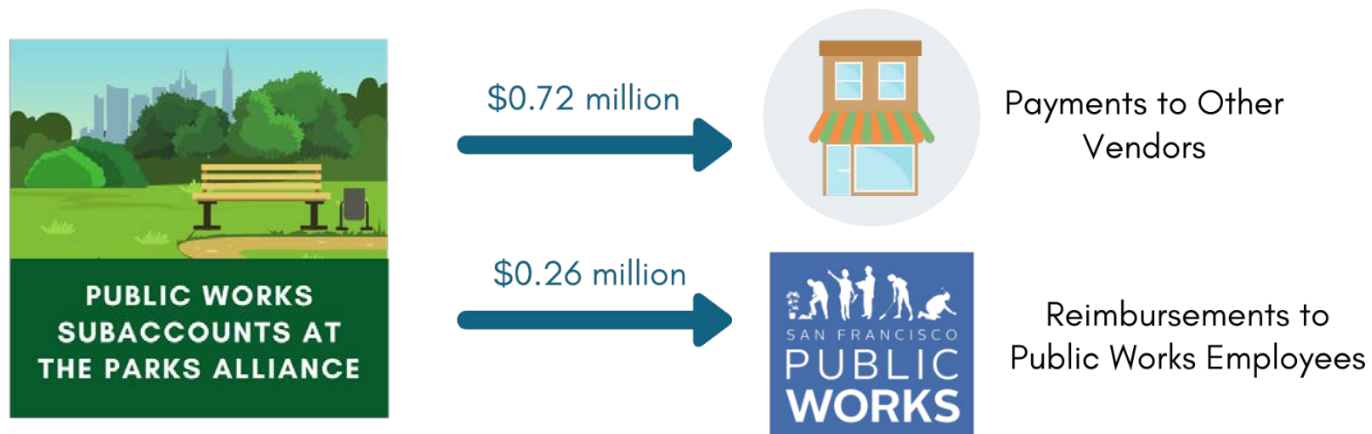
Preliminary Finding

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.

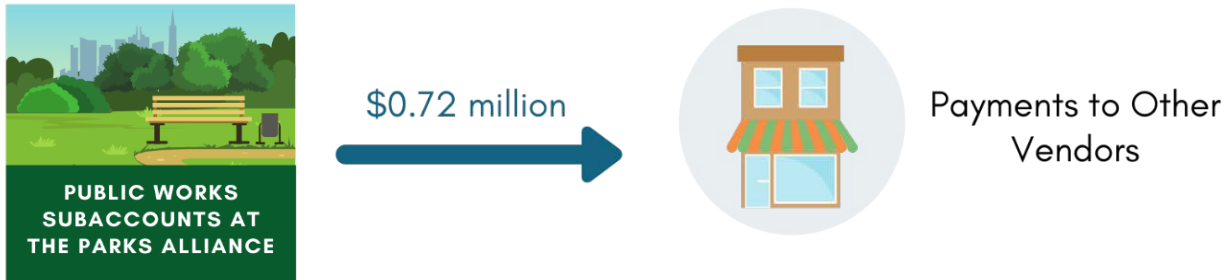
Public Works Used the Parks Alliance's Public Works Subaccounts to Make Payments on Its Behalf



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



\$0.26 million



Reimbursements
to Individuals

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?

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



Sent VIA email (raquel@sfmea.org; christina@sfmea.org; gregg@majlabor.com)

DATE: October 30, 2020

TO: Raquel Silva, MEA Executive Director
Christina Fong, MEA Deputy Director
Gregg Adam, Messing, Adam & Jasmine, LLP

CC: Supervisor Matt Haney
Supervisor Aaron Peskin
Courtney McDonald, Legislative Aide
Angela Calvillo, Clerk of the Board of Supervisors
Carol Isen, Human Resources Director (Acting)
Amalia Martinez, Employee Relations Director (Acting)

FROM: Victoria Carson, Employee Relations Manager

RE: **Amended Notice – Proposed Amendment – Campaign and Governmental Conduct Code –
Behested Payments (BOS File No: 201132)**

Dear Labor Colleagues,

On September 29, 2020 Supervisors Haney and Peskin introduced an ordinance to amend the Campaign and Governmental Conduct Code to expand the definition of interested party, to prohibit appointed department heads from soliciting certain behested payments, and to require department heads to report solicitation of certain behested payments.

Copies of the proposed ordinance, its accompanying legislative digest and Public Integrity Review prepared by the Office of the Controller can be found at the link below:

<https://sfgov.legistar.com/LegislationDetail.aspx?ID=4655688&GUID=BDE6F90D-313E-4705-BBAB-99E1CA5138E9&Options=ID|Text|&Search=>

The City is providing this notice and an opportunity to meet on the proposed ordinance. Due to the COVID-19 pandemic and public health orders, including the shelter-in-place orders, the City offers to meet remotely, by videoconference. The City is available to meet on **Wednesday, November 18, 2020 from 11am-12pm**. The Employee Relations Division will send an invitation for the meeting.

Attachments: Ordinance File No. 201132
Legislative Digest File No. 201132
Public Integrity Review (092420)

1 [Campaign and Governmental Conduct Code - Behested Payments]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to expand the**
4 **definition of interested party, to prohibit appointed department heads from soliciting**
5 **certain behested payments, and to require department heads to report solicitation of**
6 **certain behested payments.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

11

12 Be it ordained by the People of the City and County of San Francisco:

13

14 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
15 revising Sections 3.600 and 3.610, and adding Section 3.605, to read as follows:

16 **SEC. 3.600. DEFINITIONS.**

17 Whenever in this Chapter 6 the following words or phrases are used, they shall have
18 the following meanings:

19 "Agent" shall mean any person who represents a party in connection with a proceeding
20 involving a license, permit or other entitlement for use. be defined as set forth in Title 2, Section
21 18438.3 of California Code of Regulations, as amended from time to time.

22 "Appointed department head" shall mean any department head who is required to file a
23 Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code, except for the
24 Assessor-Recorder, City Attorney, District Attorney, Mayor, Public Defender, Sheriff, and Treasurer.

25 * * * *

1 “Commissioner” shall mean any member of a board or commission who is required to file a
2 Statement of Economic Interests as set forth in Section 3.1-103(a)(1) of this Code.

3 * * * *

4 “Elected department head” shall mean Assessor-Recorder, City Attorney, District Attorney,
5 Mayor, Public Defender, Sheriff, or Treasurer.

6 * * * *

7 “Interested party” shall mean either:

8 (a) any party, participant or agent of a party or participant involved in a
9 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
10 use, ~~before an officer or any board or commission (including the Board of Supervisors) on which the~~
11 ~~officer sits; or~~

12 (b) any person contracting with or seeking to contract with the officer’s department.

13 “License, permit, or other entitlement for use” shall mean professional, trade or land use
14 licenses, permits, or other entitlements to use property or engage in business, including professional
15 license revocations, conditional use permits, rezoning of property parcels, zoning variances, tentative
16 subdivision and parcel maps, cable television franchises, building and development permits, private
17 development plans, and contracts (other than labor or personal employment contracts and
18 competitively bid contracts where the City is required to select the highest or lowest qualified bidder).
19 be defined as set forth in California Government Code Section 84308, as amended from time to time.

20 “Officer” shall mean any commissioner, appointed department head or elected department
21 head. ~~the Mayor, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, Public~~
22 ~~Defender, a Member of the Board of Supervisors, or any member of a board or commission who is~~
23 ~~required to file a Statement of Economic Interests, including all persons holding positions listed in~~
24 ~~Section 3.1-103(a)(1) of this Code.~~

25 “Payment” shall mean a monetary payment or the delivery of goods or services.

1 “Participant” shall means any person who is not a party but who actively supports or opposes
2 (by lobbying in person, testifying in person, or otherwise acting to influence) a particular decision in a
3 proceeding involving a license, permit, or other entitlement for use and who has a financial interest in
4 the decision. ~~be defined as set forth in California Government Code Section 84308 and Title 2, Section~~
5 ~~18438.4 of California Code of Regulations, as amended from time to time.~~

6 “Party” shall mean any person who files an application for, or is the subject of, a proceeding
7 involving a license, permit, or other entitlement for use. ~~be defined as set forth in California~~
8 ~~Government Code Section 84308, as amended from time to time.~~

9 “Payment” shall mean a monetary payment or the delivery of goods or services.

10 “Pending contract” shall mean a contract or prospective contract from the submission of a
11 proposal until either (1) the termination of negotiations for such contract; or (2) the term of the
12 contract has expired.

13 “Pending proceeding” shall mean a proceeding regarding administrative enforcement, a
14 license, a permit, or other entitlement for use, while it is before (1) an officer or any board or
15 commission (including the Board of Supervisors) on which the officer sits, if the officer is a
16 commissioner or (2) before the officer’s department, if the officer is an appointed department head or
17 elected department head.

18 “Person” shall be defined as set forth in Section 1.104 of this Code.

19 * * * *

20
21 **SEC. 3.605. PROHIBITING APPOINTED DEPARTMENT HEADS FROM SOLICITING**
22 **BEHESTED PAYMENTS.**

23 **(a) PROHIBITION.**

24 (1) Appointed department heads shall not solicit any behested payment from any party,
25 participant or agent of a party or participant involved in a pending proceeding:

1 (A) during the pending proceeding; and
2 (B) for six months following the date on which a final decision is rendered in the
3 pending proceeding.

4 (2) Appointed department heads shall not solicit any behested payment from any person
5 with a pending contract before their department.

6 **(b) EXCEPTIONS.**

7 (1) Elected department heads. This Section 3.605 shall not apply elected department
8 heads.

9 (2) Public appeals. This Section 3.605 shall not apply to public appeals made by
10 appointed department heads.

11 (3) City department. This Section 3.605 shall not apply to requests or solicitations for
12 behested payments made directly to a City department.

13
14 **SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS.**

15 **(a) FILING REQUIREMENT - COMMISSIONERS AND ELECTED DEPARTMENT**
16 **HEADS.**

17 (1) Proceeding regarding administrative enforcement, a license, a permit, or other
18 entitlement for use. ~~If an officer~~ a commissioner or elected department head directly or indirectly
19 requests or solicits any behested payment(s) from ~~an interested party~~ any party, participant or
20 agent of a party or participant involved in a pending proceeding, the ~~officer~~ commissioner or elected
21 department head shall file ~~the a~~ behested payment report ~~described in subsection (b) with the Ethics~~
22 ~~Commission~~ in the following circumstances:

23 (+) (A) if the interested party makes any behested payment(s) totaling
24 \$1,000 or more during the ~~pendency of the matter involving the interested party~~ pending proceeding,
25 the ~~officer~~ commissioner or elected department head shall file a behested payment report ~~within 30~~

1 *days of the date on which the behested payment was made, or if there has been a series of behested*
2 *payments, within 30 days of the date on which the behested payment(s) total \$1,000 or more;*

3 *(2) (B) if the interested party makes any behested payment(s) totaling*
4 *\$1,000 or more during the six months following the date on which a final decision is rendered*
5 *in the ~~matter involving the interested party pending proceeding~~, the ~~officer~~ commissioner or elected*
6 *department head shall file a behested payment report ~~within 30 days of the date on which the~~*
7 *~~behested payment was made, or if there has been a series of behested payments, within 30 days of the~~*
8 *~~date on which the behested payment(s) total \$1,000 or more;~~ and*

9 *(3) (C) if the interested party made any behested payment(s) totaling*
10 *\$1,000 or more in the 12 months prior to the commencement of a ~~matter involving the interested~~*
11 *~~party pending proceeding~~, the ~~officer~~ commissioner or elected department head shall file a behested*
12 *payment report within 30 days of the date the ~~officer~~ commissioner or elected department head*
13 *knew or should have known that the source of the behested payment(s) became an interested*
14 *party.*

15 *(2) Person contracting with or seeking to contract with department. If a commissioner*
16 *or elected department head directly or indirectly requests or solicits any behested payment(s) totaling*
17 *\$1,000 or more from any person who has a pending contract, the commissioner or elected department*
18 *head shall file a behested payment report.*

19 **(b) FILING REQUIREMENT – APPOINTED DEPARTMENT HEADS.**

20 *(1) Proceeding regarding administrative enforcement, a license, a permit, or other*
21 *entitlement for use.*

22 *(A) If an appointed department head directly or indirectly requests or solicits*
23 *any behested payment(s) totaling \$1,000 or more from any party, participant or agent of a party or*
24 *participant involved in a pending proceeding in the 12 months prior to the commencement of the*
25 *proceeding, the appointed department head shall file a behested payment report within 30 days of the*

1 date the appointed department head knew or should have known that the source of the behested
2 payment(s) became an interested party.

3 (B) If an appointed department head directly or indirectly requests or solicits
4 any behested payment(s) from any party, participant or agent of a party or participant involved in a
5 pending proceeding, and if the direct recipient of the behested payment is a City department, the
6 appointed department head shall file a behested payment report under the following circumstances:

7 (i) if the interested party makes any behested payment(s) totaling \$1,000
8 or more during the pending proceeding; and

9 (ii) if the interested party makes any behested payment(s) totaling \$1,000
10 or more during the six months following the date on which a final decision is rendered in the pending
11 proceeding.

12 (2) **Person contracting with or seeking to contract with department.** If an appointed
13 department head directly or indirectly requests or solicits any behested payment(s) totaling \$1,000 or
14 more from any person who has a pending contract with the department head's department, and if the
15 direct recipient of the behested payment is a City department, the department head shall file a behested
16 payment report.

17 ~~(b)~~ (c) **BEHESTED PAYMENT REPORT.** The behested payment report shall include
18 the following:

- 19 (1) name of payor;
20 (2) address of payor;
21 (3) amount of the payment(s);
22 (4) date(s) the payment(s) were made,
23 (5) the name~~(s)~~ and address~~(es)~~ of the payee(s),
24 (6) a brief description of the goods or services provided or purchased, if any,
25 and a description of the specific purpose or event for which the payment(s) were made;

1 (7) if the officer or the officer's relative, staff member, or paid campaign staff, is
2 an officer, executive, member of the board of directors, staff member or authorized agent for
3 the recipient of the behested payment(s), such individual's name, relation to the officer, and
4 position held with the payee;

5 (8) if the payee has created or distributed 200 or more substantially similar
6 communications featuring the officer within the six months prior to the deadline for filing the
7 behested payment report, a brief description of such communication(s), the purpose of the
8 communication(s), the number of communication(s) distributed, and a copy of the
9 communication(s); and

10 (9) if in the six months following the deadline for filing the behested payment
11 report, the payee has created or distributed 200 or more substantially similar communications
12 featuring the officer, the officer shall file an amended payment report that discloses a brief
13 description of such communication(s), the purpose of the communication(s), the number of
14 communication(s) distributed, and a copy of the communication(s).

15 *(d) FILING A BEHESTED PAYMENT REPORT. Unless otherwise provided under this*
16 *Section 3.610, when an officer is required to file a behested payment report, the officer shall file the*
17 *behested payment report described in subsection (c) with the Ethics Commission within 30 days of the*
18 *date on which the behested payment was made, or if there has been a series of behested payments,*
19 *within 30 days of the date on which the behested payments total \$1,000 or more.*

20 ~~(e)~~ (e) **AMENDMENTS.** If any of the information previously disclosed on a behested
21 payment report changes during the pendency of the matter involving the interested party, or
22 within six months of the final decision in such matter, the officer shall file an amended
23 behested payment report.

24 ~~(d)~~ (f) **PUBLIC APPEALS.** Notwithstanding subsections (a) and (b), no officer shall be
25 required to report any behested payment that is made solely in response to a public appeal.

1 ~~(e)~~ ~~(g)~~ **NOTICE.** If an officer solicits or otherwise requests, in any manner other than a
2 public appeal, that any person make a behested payment, the official or his agent must notify
3 that person that if the person makes any behested payment in response to the solicitation or
4 request, the person may be subject to the disclosure and notice requirements in Section
5 3.620.

6 ~~(f)~~ ~~(h)~~ **WEBSITE POSTING.** The Ethics Commission shall ~~make available through its~~
7 ~~website~~ all behested payment reports it receives from officers on its website.

8
9 Section 2. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor's veto of the ordinance.

13
14 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the "Note" that appears under
19 the official title of the ordinance.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: /s/ Andrew Shen
24 ANDREW SHEN
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of interested party, to prohibit appointed department heads from soliciting certain behested payments, and to require department heads to report solicitation of certain behested payments.

Existing Law

State law requires elected officials – but not City commissioners or department heads – to file “behested payment” reports when they solicit contributions of \$5,000 from a single source in a calendar year for legislative, governmental, or charitable purposes. Such reports must be filed with the Ethics Commission. See Cal. Gov. Code §§ 82004.5, 84224.

Local law additionally requires City commissioners and elected officials – but not appointed City department heads – to file behested payment reports for solicitations of charitable contributions totaling \$1,000 or more from “interested parties” with certain matters before their commissions. These matters include proceedings regarding administrative enforcement, a license, a permit, or other entitlement for use before their boards and commissions. Commissioners are required to file these reports when they solicit a behested payment from:

- a party, participant or agent of a party or participant in a proceeding while the matter is pending;
- a party, participant or agent of a party or participant in a proceeding during the six months following the date a final decision is rendered in the matter; and
- a party, participant or agent of a party or participant in the 12 months prior to the commencement of a proceeding, after the commissioner learns or should have learned that the source of the contribution became involved in a proceeding.

S.F. Campaign & Gov’tal Conduct Code § 3.610.

Local law also requires the donors and recipients of such contributions to file additional reports. These reports must also be filed with the Ethics Commission. S.F. Campaign & Gov’tal Conduct Code §§ 3.620, 3.630.

Amendments to Current Law

The proposed legislation would expand “interested parties” to include contractors and prospective contractors before an officer’s department or commission.

The proposed legislation would prohibit appointed department heads from soliciting behested payments from interested parties while their matters are pending before their department. The proposal would also prohibit such solicitations for six months after those matters are concluded.

This prohibition on fundraising by appointed department heads would not apply to:

- elected department heads (the Assessor-Recorder, City Attorney, District Attorney, Mayor, Public Defender, Sheriff, and Treasurer);
- solicitations for behested payments that are made directly to City departments, or
- solicitations made through “public appeals.”

The proposed legislation would also require appointed department heads to report behested payments from interested parties, if the department head sought a behested payment in the 12 months prior to the commencement of a proceeding, after the department learns or should have learned that the source of the contribution became involved in a proceeding before their department. Likewise, appointed department heads would be required to report behested payments from interested parties if the direct recipient of a behested payment is a City department.

Background Information

The behested payment reports required by existing law are available on the Ethics Commission’s website:

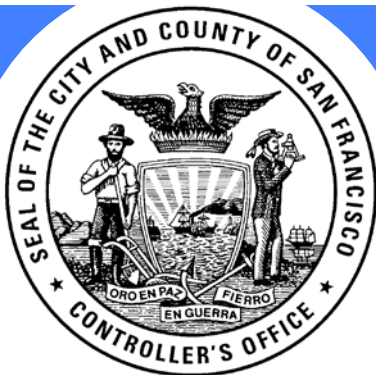
<https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer>

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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)*

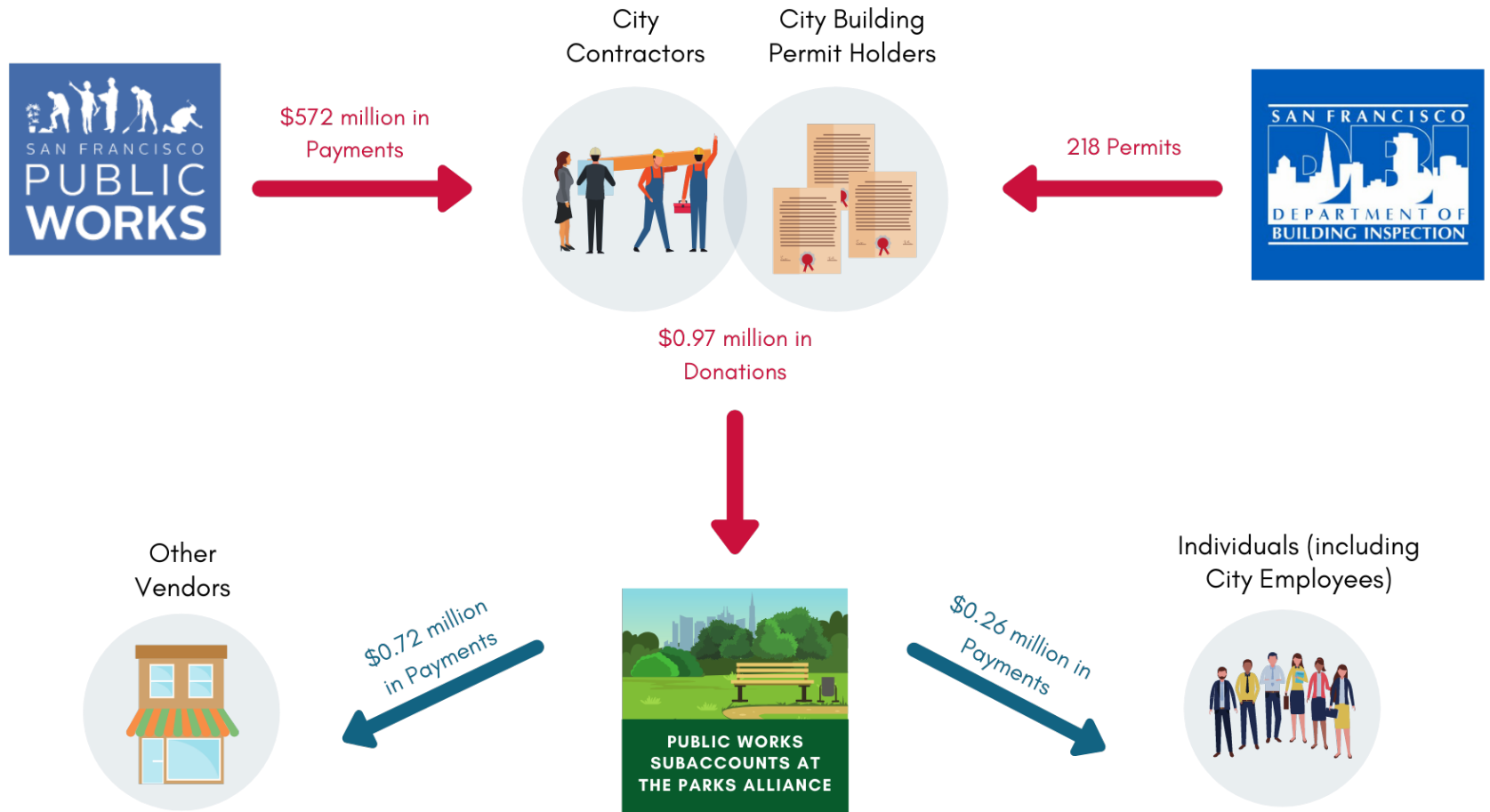
Preliminary Findings

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

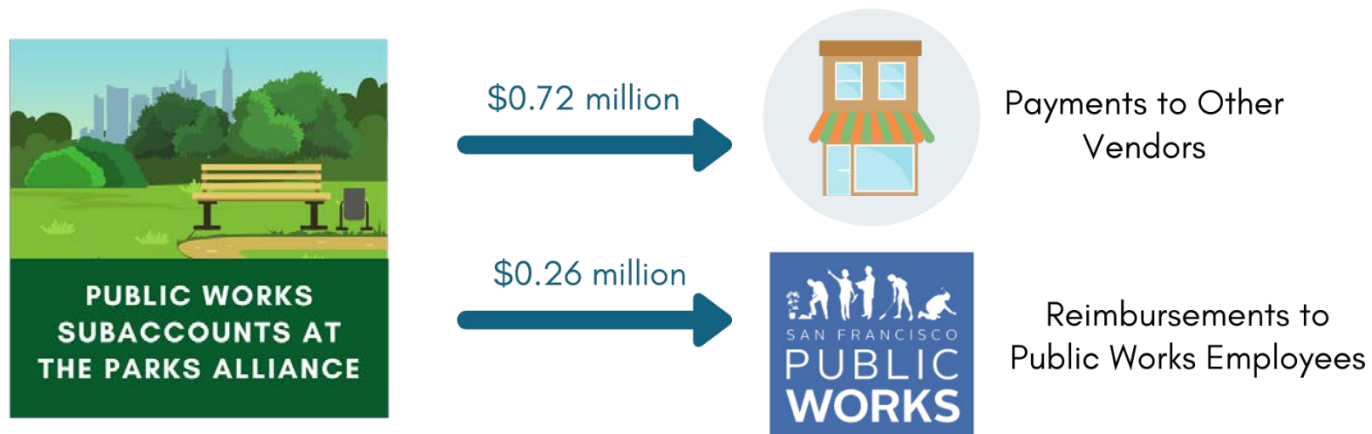
Preliminary Finding

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.

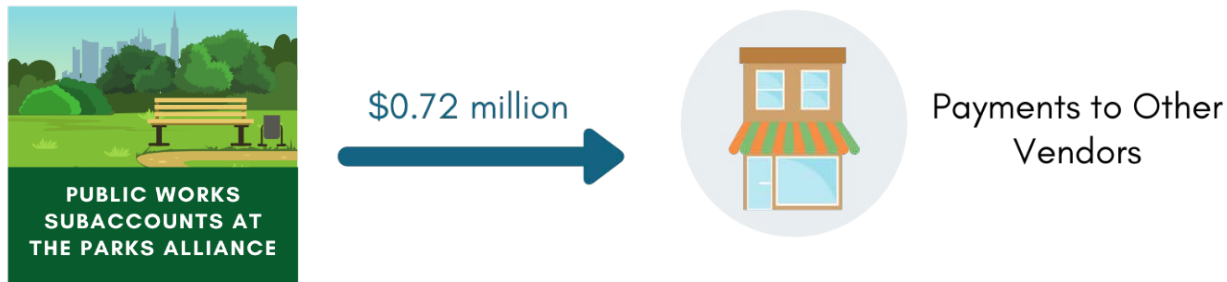
Public Works Used the Parks Alliance's Public Works Subaccounts to Make Payments on Its Behalf



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?

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



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

NOREEN AMBROSE
CHAIR

December 9, 2020

YVONNE LEE
VICE-CHAIR

Angela Calvillo, Clerk of the Board of Supervisors
City Hall, Room 244

DAINA CHIU
COMMISSIONER

1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

FERN M. SMITH
COMMISSIONER

Re: File 201132 – Ethics Commission Action on Proposed Legislation

LARRY BUSH
COMMISSIONER

Dear Ms. Calvillo:

LEEANN PELHAM
EXECUTIVE DIRECTOR

At its November 13, 2020 Regular Meeting, the Ethics Commission voted unanimously to support legislation that would prohibit City officers and employees from soliciting behested payments from interested parties. The Commission's recommendation is briefly summarized in this letter and is more fully described in the attached staff report dated November 9, 2020. The Commission requests that this letter and the attached report be added to the file for File No. 201132, legislation sponsored by Supervisors Haney and Peskin that is similar to what the Commission recommends.

The Ethics Commission recommends that the Board of Supervisors amend File No. 201132 to conform it to the Commission's full recommendation as described below and that the ordinance as amended be scheduled for Committee hearing and consideration by the full Board at the earliest opportunity after the Board's winter recess.

Background

Throughout 2020, the City has seen a number of officials, employees, and contractors charged with crimes of corruption by the federal government. Additionally, the Controller and City Attorney are conducting large scale inquiries into corrupt activities within the City, including to identify and prevent future violation of city laws and policies. Thus far, the following allegations have become public:

- In January 2020, the FBI announced a federal corruption case against Mohammed Nuru, then the Director of the Department of Public Works, and Nick Bovis, a local businessman. The pair were charged with fraud for multiple alleged schemes to rig City contracts, including a scheme to bribe an Airport commissioner.
- On March 10th, the City Attorney sent a report to the Mayor detailing allegations that the Director of the Department of Building Inspection, Tom Hui, violated state and local ethics laws. Hui subsequently resigned.

- On June 8th, the FBI charged Sandra Zuniga, director of the Mayor's Office of Neighborhood Services, with conspiracy to commit money laundering for allegedly helping Nuru launder bribes.
- On June 8th, the FBI also charged two City contractors, Balmore Hernandez and Florence Kong, with fraud and bribery, respectively, for allegedly attempting to bribe Nuru for favorable treatment on City contracting awards. Both have agreed to plead guilty, and Hernandez is cooperating with the federal investigation.
- On June 24th, Walter Wong, a permit expeditor, was charged with conspiracy to commit fraud and conspiracy to commit money laundering for his involvement with Nuru. Wong agreed to plead guilty and cooperate with the federal investigation.
- On September 17th, Alan Varela and William Gilmartin III were charged with bribery for their alleged attempts to secure City contracts by making gifts to Nuru.
- On November 18th, Paul Giusti, former Government & Community Relations Manager for Recology's San Francisco Group, was charged with bribery and money laundering for his alleged attempt to secure favorable treatment for Recology by bribing Nuru with behested payments and other benefits.
- On November 30th, Harlan Kelly, then-general manager of the Public Utilities Commission, was charged with fraud for allegedly taking bribes. Kelly subsequently resigned his position.

If true, the allegations against these individuals demonstrate an alarming level of unethical conduct in and around City government and its decision-making processes. In response, the Ethics Commission has undertaken a comprehensive review of the City's conflict of interest laws to ensure that the City's ethics laws and programs are strengthened so as to deter similar unethical conduct in the future.

The first phase of this project focusses on behested payments. Both the FBI and the Controller have found that City employees, including Mohammed Nuru, have routinely solicited behested payments from persons and entities that have official business before them. The FBI has produced evidence that these payments were in fact bribes intended to secure favorable treatment by the City for those making the payments. The Commission is deeply concerned about the practice of soliciting behested payments from interested parties, both for its inherent ethical risks and its ability to undermine existing laws restricting gifts and political contributions. The ethical risks associated with soliciting behested payments from interested parties are more fully discussed in Section II of the attached staff report.

Overview of Proposal

To close the loophole in gift and contribution laws caused by unrestricted behested payments, the Commission unanimously supports the enactment of a new City ordinance that extends certain

existing gift and contribution laws to behested payments. In summary, the Commission recommends that the new law do the following:

1. Strengthen the existing behested payment rules by prohibiting City officials and employees from soliciting behested payments from interested parties;
2. Expand the list of *officials* subject to the prohibition to include all City elected officials, members of boards and commissions, and department heads;
3. Expand the list of employees subject to the prohibition to include to include all form 700 filers;
4. Expand the list of *interested parties* covered to include:
 - a. parties and participants to City proceedings involving permits, licenses, entitlements for use, and administrative enforcement
 - b. City contractors, including:
 - i. all City contractors who (a) are parties to a contract that was approved by the elected official in question, or (b) are parties to a contract with the department of the commissioner, board members, department head, or employee in question,
 - ii. all parties that have submitted a proposal for such a contract, and
 - iii. all affiliates of the contracting or bidding entity
 - c. registered lobbyists, and
 - d. all *restricted sources* under section 3.216 of the Campaign and Governmental Conduct Code, including persons who have sought within the last twelve months to influence the legislative or administrative action of the officer or employee in question;
5. Allow officers or department heads to solicit monetary payments from interested parties so long as they are solicited for a City fund established for such gifts under Administrative Code section 10.100 et seq.

In the second report of its public integrity review, the Controller's City Services Auditor Division recommended that a substantially similar rule be created. Supervisors Haney and Peskin have introduced File No. 201132 to apply this type of rule to appointed department heads. The Commission fully supports these efforts, but believes that to be truly effective the rule must apply uniformly to all officials and to certain designated employees. Thus, the Commission recommends that File No. 201132 be amended to include the provisions enumerated above and be enacted as soon as practicable.

If you have any questions for the Ethics Commission or would like any additional information from our office, please feel free to contact me or Senior Policy and Legislative Counsel Patrick Ford at (415) 252-3100.

Sincerely,

LeeAnn Pelham

LeeAnn Pelham
Executive Director



ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

NOREEN AMBROSE
CHAIR

YVONNE LEE
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FERN M. SMITH
COMMISSIONER

LARRY BUSH
COMMISSIONER

LEEANN PELHAM
EXECUTIVE DIRECTOR

Date: November 9, 2020
To: Members of the Ethics Commission
From: Pat Ford, Senior Policy and Legislative Affairs Counsel
Re: **AGENDA ITEM 6 – Discussion and possible action on Staff report on Phase One of the Government Ethics and Conflict of Interest Review: Behested Payments**

Summary This report presents Staff’s findings and recommendations for the first phase of the Commission’s review of the City’s government ethics laws. The first phase of the project addresses behested payment laws. Staff recommends that the City create two new rules regarding behested payments to prevent pay-to-play and other ethics problems.

Action Requested That the Commission discuss Staff’s recommendations and approve a motion approving the recommendations in Section III.

This report contains Staff’s initial findings and recommendations for the first phase of the Commission’s review of certain aspects of the City’s government ethics laws. The first phase addresses behested payment laws. Section I provides a general overview of the Commission’s review project. Section II presents the initial findings of Staff’s review, including an explanation of what behested payments are, an overview of existing laws on behested payments and gifts, and a discussion of the ethics issues presented by behested payments. Section III discusses Staff’s recommended improvements to the law to address the ethics issues outlined in Section II.

Staff recommends that the City create two new rules regarding behested payments to prevent pay-to-play and other ethics problems. The rules are designed to address the most urgent ethics issues involving behested payments while still allowing City officials and employees to engage in charitable and governmental fundraising.

I. Overview of the Ethics Commission’s Review Project

In January of this year, the FBI announced a federal corruption case against Mohammed Nuru, then the Director of the Department of Public Works, and Nick Bovis, a local

businessman.¹ On March 10th, the City Attorney sent a report to the Mayor detailing allegations that the Director of the Department of Building Inspection, Tom Hui, also violated state and local ethics laws. Hui subsequently resigned.² On June 8th, the FBI charged three additional individuals with crimes related to the original complaint against Nuru and Bovis: Sandra Zuniga, director of the Mayor’s Office of Neighborhood Services, and Balmore Hernandez and Florence Kong, both City contractors. Hernandez and Kong have since pled guilty.³ On June 24th Walter Wong, a permit expeditor, was also charged with related crimes.⁴ Some of the conduct for which these individuals have been investigated and charged includes attempting to bribe a City commissioner, giving and receiving gifts in exchange for favorable treatment by the City, and laundering gifts to disguise their source and nature. If true, these allegations demonstrate an alarming level of unethical conduct in and around City government and its decision-making processes.

The Controller’s City Services Auditor Division and the City Attorney have also undertaken investigations of multiple City departments and private organizations in response to the federal allegations. On June 29th, the Controller’s office released the first in a series of reports as part of its public integrity review. The report reviews contracting practices at the Department of Public Works and includes a recommendation that San Francisco’s gift rules be tightened to eliminate loopholes.⁵ On September 24th, the Controller’s office released its second report, which focuses on the use of non-City accounts by City departments. This report includes ethics recommendations, including the recommendation that certain requests for behested payments by City employees be prohibited.⁶ On November 5th, the Controller released its third report, which focusses on the City’s contractor

¹ U.S. v. Mohammed Colin Nuru and Nick James Bovis, Case No. 3 20 70028, Criminal Complaint and Affidavit of FBI Special Agent James A. Folger in Support of Criminal Complaint (N.D. Cal. 2020), *available at* <https://www.justice.gov/usao-ndca/press-release/file/1240101/download>.

² City Attorney of San Francisco, Herrera investigation Reveals Building Department Director Misconduct, March 10, 2020, *available at* <https://www.sfcityattorney.org/2020/03/10/herrera-investigation-reveals-building-department-director-misconduct/>.

³ U.S. Attorney’s Office, Northern District of California, San Francisco Public Official and Contractors Charged with Crimes Related to Public Corruption and Money Laundering Scheme, June 8, 2020, *available at* <https://www.justice.gov/usao-ndca/pr/san-francisco-public-official-and-contractors-charged-crimes-related-public-corruption>. Hernandez pled guilty to conspiracy to commit honest services wire fraud and agreed cooperate with the investigation. Kong pled guilty to bribery and lying to the FBI.

⁴ U.S. Attorney’s Office, Northern District of California, June 24, 2020, Contractor And Permit Expediter Charged With Corrupting San Francisco City Officials, *available at* <https://www.justice.gov/usao-ndca/pr/contractor-and-permit-expediter-charged-corrupting-san-francisco-city-officials>. Wong agreed to plead guilty to conspiracy to commit honest services wire fraud and conspiracy to commit money laundering.

⁵ PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: PUBLIC WORKS CONTRACTING, City and County of San Francisco, Office of the Controller (June 29, 2020), *available at* <https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20-%20Deliverable%201%2C%20Public%20Works%20Contracting%206.29.2020.pdf>.

⁶ PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: GIFTS TO DEPARTMENTS THROUGH NON-CITY ORGANIZATIONS LACK TRANSPARENCY AND CREATE “PAY-TO-PLAY” RISK, City and County of San Francisco, Office of the Controller (June 29, 2020), *available at* <https://sfcontroller.org/gifts-departments-through-non-city-organizations-lack-transparency-and-create-%E2%80%9Cpay-play%E2%80%9D-risk> (hereinafter “Public Integrity Report 2”).

debarment process.⁷ The Controller anticipates releasing additional reports as part of its public integrity review. The continued efforts of the Controller and the City Attorney may reveal additional unethical conduct aside from the allegations in the federal investigation. Subsequent phases of this review project will seek to address new information learned from those investigations.

In light of these developments, at its September 2020 meeting the Commission identified a review of the City's government ethics laws as its top policy priority. The purpose of the project is to assess whether current law adequately identifies and prohibits conduct that could give rise to a conflict of interest or otherwise undermine fair and objective government decision making. Where current laws and programs are insufficient, the project will seek to recommend and implement improvements. The project will principally focus on analyzing unethical conduct revealed through the multiple ongoing corruption investigations and identifying policy approaches to deter similar conduct in the future.

Staff is approaching the project in multiple phases. The current, initial phase of the project addresses behested payments and explores whether any changes to existing laws or programs are needed in order to address ethical issues surrounding this practice. Subsequent phases of the project will involve other aspects of government ethics law. Staff anticipates that the second phase will focus on gift rules, including gift prohibitions, limits, and disclosures.

During all phases of the project, Staff's methodology will encompass reviewing the findings of the ongoing corruption investigations, discussing the findings with the author agency (where possible), analyzing existing City laws and programs, and comparing approaches taken in other jurisdictions. Another core part of Staff's methodology will be engagement with stakeholders, including advocates, good government groups, members of the regulated community, and peer agencies. Staff held interested persons meetings on October 13th and 15th and will continue to hold such meetings periodically throughout the course of the project.

II. Findings

This section provides Staff's findings regarding the use of behested payments in San Francisco and the state of current behested payment laws. The findings draw primarily from information revealed through the ongoing corruption investigations, local investigative journalism, and Staff's independent review of select behested payment filings. The section first explains the concept of behested payments and existing laws regulating them. The section then describes relevant ethics laws regarding gifts and contributions. This section then discusses ethics issues involving behested payments that have been identified in San Francisco.

⁷ PUBLIC INTEGRITY REVIEW, PRELIMINARY ASSESSMENT: SAN FRANCISCO'S DEBARMENT PROCESS, City and County of San Francisco, Office of the Controller (November 5, 2020) *available at* <https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20Review-%20San%20Francisco%27s%20Debarment%20Process%2011.05.20.pdf>.

A. Behested Payments - In General

A behested payment is a payment made at the behest of a government official. California law defines *at the behest of* to mean “under the control or at the direction of, in cooperation, consultation, coordination, or concert with, at the request or suggestion of, or with the express, prior consent of.”⁸ Most frequently, behested payments occur when government officials ask someone to make a payment to a nonprofit organization. Behested payments are not contributions to the government official because they are not used for the purpose of seeking or holding office.⁹ They are not considered to be gifts to the official either because the official does not directly receive the payment.¹⁰ Instead, behested payments are addressed separately by the California Political Reform Act and the San Francisco Campaign and Governmental Conduct Code.

The California Political Reform Act requires that elected officials publicly disclose all behested payments of \$5,000 or more made at their behest.¹¹ This disclosure requirement applies to all City elected officials. The disclosure is made on the FPPC Form 803.¹²

The San Francisco Campaign and Governmental Conduct Code additionally requires that all City elected officials and members of City boards and commissions publicly disclose all behested payments of \$1,000 or more made at their behest if the person making the behested payment is an interested party.¹³ An *interested party* is a “party, participant or agent of a party or participant involved in a proceeding regarding administrative enforcement, a license, a permit, or other entitlement for use before” the official in question.¹⁴ This disclosure is made on the Form SFEC-3.610(b).¹⁵

In general, neither California nor San Francisco law restricts the ability of a City official or employee to ask for behested payments.¹⁶

⁸ Cal. Gov. Code § 82041.3. San Francisco Law contains an identical definition of *at the behest of*. S.F. Campaign & Gov. Conduct Code § 3.600. San Francisco law defines *behested payment* as “a payment that is made at the behest of an officer, or an agent thereof, and that is made principally for a legislative, governmental, or charitable purpose.” *Id.* at § 3.600.

⁹ Cal. Gov. Code § 82015(c)(4).

¹⁰ *Id.* at § 82028 (“‘Gift’ means ... any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received”).

¹¹ Cal. Gov. Code § 84224.

¹² Form 803 filings in San Francisco are available at <https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer>.

¹³ S.F. Campaign & Gov. Conduct Code § 3.610.

¹⁴ *Id.* at 3.600. This definition of *interested party* mirrors the language of California Government Code section 84308, which states that officials shall not “accept, solicit, or direct a contribution of more than two hundred fifty dollars” from an interested party. Cal. Gov. Code § 84308.

¹⁵ Form SFEC-3.610(b) filings are available at <https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer/behested-payment-filings-by-elected-officials-and-board-and-commission-members>.

¹⁶ One law that does create some limitation on the ability of a City officer to ask for behested payments is S.F. Campaign & Gov. Conduct Code § 3.207(a)(1), which prohibits City officials from using their public offices to

B. Existing Laws Regarding Gifts and Contributions

Existing state and local laws prohibit certain gifts and political contributions from certain individuals to City officials and employees. These laws are intended to be prophylactic in nature, preventing conflicts of interest by prohibiting types of transactions that carry an inherent risk of corruption. However, existing laws fail to address these same concerns in the context of behested payments, and, as described in Section II.C below, this has given rise to ethics problems.

1. *Gift Rules: Restricted Sources and Lobbyists*

City officials and employees are prohibited from soliciting or accepting gifts from any known *restricted source*. A restricted source is a person who is (a) doing business with the officer or employee's department or is seeking to do business with the department, or (b) has sought within the last twelve months to influence the officer or employee's official actions.¹⁷

Similarly, City officials are prohibited from accepting gifts from registered lobbyists, and lobbyists are prohibited from giving such gifts.¹⁸ Lobbyists cannot give gifts to an official's parent, spouse, registered domestic partner, or dependent child either.

Both rules prohibit certain gifts based on the identity of the person making the gift because such a transaction, by its very nature, carries the risk of pay-to-play. Pay-to-play is a form of political corruption whereby government officials or employees give favorable treatment to persons who provide things of value, sometimes at the request of the official or employee. Because restricted sources and lobbyists are, by definition, seeking favorable outcomes from government, they are prohibited from making gifts.

2. *Contribution Rules: City Contractors and Parties to City Proceedings*

In the campaign finance context, officials cannot solicit or accept political contributions from a City contractor, or any affiliate of the contractor, if the official has approval authority over the contractor's contract.¹⁹ This rule also applies to contributions from persons who are seeking, but have not yet been awarded, a City contract. The rule applies to candidates for the office of the City official with contract approval authority as well. For example, if a contract was approved by the Board of Supervisors, neither the contractor nor any of its affiliates may make a contribution to a sitting Supervisor or any candidate for Supervisor.

solicit things of value for organizations with which they are affiliated. However, this rule only applies to behested payments when the official affirmatively invokes his or her public position when making the request for the behested payment *and* is soliciting the behested payment for a recipient with which the official has some form of established relationship, such as membership on the organization's board of directors or advisory committee or a title such as *fundraising chair*.

¹⁷ S.F. Campaign & Gov. Conduct Code § 3.216(b).

¹⁸ *Id.* at 2.115(a)(1) & (2).

¹⁹ *Id.* at 1.126(d). Affiliates of a contractor include the contractor's board of directors, officers, major shareholders, and subcontractors.

Similarly, the California Political Reform Act prohibits officials from soliciting contributions of \$250 or more from parties or participants in certain proceedings before the official.²⁰ This rule applies not only to contributions made to the official in question, but also any contribution to a third party that the official requests. If an official previously received a contribution from a person who subsequently becomes a party or participant in a proceeding before the official, the official must recuse from all participation in the proceeding.²¹

3. *Policy Rationales*

The gift and contribution rules described above were created to serve the same purposes. The primary purposes are (a) preventing those who are seeking favorable City decisions from using political contributions or gifts as a means to influence the decision making of a City official or to reward the official for past actions, (b) ensuring that government decisions are based on the merits, rather than the identity of the parties involved, (c) avoiding the appearance of inappropriate influence over government decisions by special interests, and (d) avoiding the perception that special payments are required from members of the public in order to secure favorable outcomes from the City. These policy goals were clearly stated when voters created the law prohibiting City elected officials and candidates from accepting contributions from City contractors. In his statement in support of the measure, Mayor Gavin Newsom explained that:

By banning contributions from those who seek major actions from the city, we help ensure a government that is more responsive to the needs of every resident—not just those who help fund campaigns. This measure increases confidence in government by decreasing special interest influence over government decisions. It also protects those many residents who are legitimately petitioning their government for action from feeling as if they must give to campaigns in order to be heard.²²

4. *Not Applicable to Behested Payments*

Although ethics rules are relatively robust and well developed as regards gifts and political contributions, behested payments are not subject to them. Thus, officials and employees are generally free to solicit a behested payment from a person who is seeking some favorable outcome from the official or employee, including a contract, license, permit, or legislative or administrative action. This creates the risk that behested payments may be used as an alternative method to unduly influence a City official or employee. It also creates the risk that behested payments are a way for officials or employees to engage in “shakedowns,” requesting something of value from someone seeking their approval. These risks are now known to be significant and have resulted in

²⁰ Cal. Gov. Code § 84308(b). The types of proceedings covered are “business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.” *Id.* at § 84308(a)(5).

²¹ *Id.* at 84308(c).

²² See S.F. Dept. of Elections, VOTER INFORMATION PAMPHLET: June 3, 2008 CONSOLIDATED STATEWIDE DIRECT PRIMARY ELECTION, Mayor Gavin Newsom, *Proponent’s Argument in Favor of Proposition H*, available at https://webbie1.sfpl.org/multimedia/pdf/elections/June3_2008.pdf.

documented incidents of corrupt activity, as detailed in Section II.C. Staff recommends creating basic ethics rules regarding behested payments to avoid the most pressing ethics problems.

C. Behested Payments – Identified Ethics Issues

As noted above in Section I, the Controller, City Attorney, and FBI are currently investigating allegations of unethical conduct by City officials and employees, City contractors, and certain non-City organizations. Documents released as part of the Controller's and FBI's investigations have revealed that behested payments have been a means for circumventing ethics laws. Additional incidents have been reported by Bay Area journalists that further indicate the presence of ethical issues surrounding behested payments. A federal corruption investigation in Los Angeles has revealed that behested payments have been used as channels for pay-to-play in that city as well. Notable instances involving state officials indicates that the same dynamics are at play in California government. These incidents show that the lack of regulation of behested payments creates a risk of pay-to-play and undermines existing laws regarding gifts and contributions.

1. *Behested Payments – San Francisco FBI Investigation*

On January 15th, the FBI released a criminal complaint against then-director of the Department of Public Works Mohammed Nuru and local businessman and City contractor Nick Bovis on charges of honest services wire fraud.²³ The Department of Justice alleges that Nuru and Bovis engaged in multiple schemes to “defraud the public of its right to the honest services of public officials through bribery and kickbacks....” In at least one of the schemes, the defendants allegedly prepared to use a behested payment as a means to bribe a San Francisco Airport Commissioner to support a particular City contract for a restaurant concession at SFO. In a secretly recorded conversation in March 2018, Nuru told an undercover FBI agent that the three individuals seeking the airport contract should make a donation to one or more charitable organizations at the behest of the airport commissioner (“Airport Commissioner 1”) in exchange for the commissioner’s support of the contract. Nuru told the individuals seeking the contract “[w]e’ll let you know which groups she wants.”²⁴

The defendants ultimately decided to offer Airport Commissioner 1 a direct cash bribe of \$5,000 instead. The commissioner appeared to decline the bribe during a meeting with the defendants, two confidential informants, and the undercover FBI agent.²⁵

This recorded incident indicates a perception, likely based on an existing practice, that behested payments are a recognized means for securing the support of City officials. Bovis had referred to

²³ U.S. v. Mohammed Colin Nuru and Nick James Bovis, Case No. 3 20 70028, Criminal Complaint and Affidavit of FBI Special Agent James A. Folger in Support of Criminal Complaint (N.D. Cal. 2020), *available at* <https://www.justice.gov/usao-ndca/press-release/file/1240101/download>.

²⁴ *Id.* at ¶ 62.

²⁵ *See id.* at ¶ 85. Regarding Airport Commissioner 1’s support of the City contract in question and the prospect of a cash payment in recognition of that support, the commissioner said “*You don’t need to do anything*. I mean, please. This is what we’re supposed to do... I’m only doing what I’m supposed to do, so I don’t have an issue, *you don’t even need to feed me*, this is what I’m supposed to do... this is exactly what I’m supposed to do” [emphasis added].

the prospect of a behested payment as a way for those seeking a contract to “giv[e] back to the community.” However, it is clear from the context that the primary purpose of such a behested payment would have been to secure a commissioner’s support for a valuable City contract that should have been awarded through established, merit-based contracting procedures.²⁶ This incident is a stark example of how behested payments can be used in a pay-to-play scheme if basic ethics rules are not in place.

2. *Public Works and Behested Payments*

Reports by the Controller’s office and investigative journalists have shown that employees of San Francisco Public Works, including former Director Nuru, had an established practice of soliciting payments from companies that do business with their department. Even more concerning, the employees behested the funds to accounts that they controlled, and in multiple instances the funds were used for the personal benefit of Public Works employees.

In the second report issued as part of its Public Integrity Review, the Controller’s office examined multiple non-City accounts maintained by the nonprofit organization Parks Alliance over which Public Works employees had control. During the five years covered by the review, \$980,000 was spent from the accounts.²⁷ The majority of this money was spent on employee events, including holiday parties, and on merchandise such as shirts and hats.²⁸ Nearly all of the funds in the Parks Alliance account were donated by seven entities that held contracts or permits with Public Works: SF Clean City Coalition, Recology, Pacific Gas & Electric, Clark Construction, Webcor Construction, Pankow Construction, and Laborers International Union.²⁹

The Controller’s office found that in multiple instances, Nuru “personally solicited these funds and directed others in the department to do the same.”³⁰ A particularly egregious incident involves the 2019 holiday party for Public Works and City Administrator staff. The total cost of the party was approximately \$40,000, 82 percent of which was paid for through behested payments from Public Works contractors. Because these City contractors were doing business with Public Works, they were *restricted sources* and Public Works employees would have been prohibited from accepting any gifts from them.³¹ But by directing the payments to a third party organization, rather than accepting them directly, Nuru and other Public Works employees apparently sought to circumvent the law prohibiting the solicitation or receipt of gifts from restricted sources. Three-hundred fifty

²⁶ FBI Special Agent Folger stated in his affidavit in support of the criminal complaint that he believed that “Bovis and Nuru were describing a scheme to offer Airport Commissioner 1 a bribe of a free trip to another city and/or a donation to a designated charitable group in order to deprive the public of Airport Commissioner 1’s honest services in the selection of airport bids.” *Id.* at ¶ 62.

²⁷ Public Integrity Report 2, at slide 22.

²⁸ *Id.* at slide 23.

²⁹ *Id.* at slide 28.

³⁰ Public Integrity Report 2, at slide 31.

³¹ See S.F. Campaign & Gov. Conduct Code § 3.216(b), Public Integrity Report 2, slides 28, 30 (finding that “[b]ased 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.”)

guests attended the party, including City employees and representatives of the City contractors who paid for the party.³² This creates the perception that by making behested payments that circumvented City gift rules, the contractors were able to secure special access to, and potentially preferential treatment by, City officials and employees.

Additionally, Parks Alliance was not the only nonprofit organization used by Nuru and other employees of Public Works as an intermediary to fund the department's holiday party. Investigative reporting by the *San Francisco Examiner* and *NBC Bay Area* indicates that in both 2017 and 2019 Public Works employees behested funds from Public Works contractors to the Lefty O'Doul's Foundation, a nonprofit organization headed by Nick Bovis. The behested funds were then used by the Lefty O'Doul's Foundation to pay for the Public Works holiday parties. Text messages obtained from Public Works by *NBC* indicate that Public Works Deputy Director Ron Alameida requested Public Works contractors Webcor Construction, Clark Construction, and Pankow Construction to make donations to the Lefty O'Doul's Foundation. On December 2, 2019, Alameida wrote to Bovis, stating "Nick – I have gotten commitments from Webcor, Clark, and Pankow for Lefty O'Doul's Foundation. Please confirm receipt. Thanks - Ron."³³ In an email from 2017, Bovis explained to a Lefty O'Doul's Foundation colleague that a \$15,000 check received by the foundation from Recology was "for the party we have to do for [Public Works] holiday party [sic]."³⁴

Investigative reporting by the *San Francisco Chronicle* indicates that this practice by Public Works employees goes back to at least 2015. In a letter obtained by the *Chronicle*, Public Works Deputy Director for Operations Larry Stringer asked Recology Vice President Mark Arsenault to make a payment to Parks Alliance to fund a Public Works open house event and employee appreciation picnic. Stringer says that Public Works hopes "we can count on your support" for the event and refers to Parks Alliance as the event's "fiscal sponsor."³⁵ The Controller found that between July 2015 and January 2020, Recology received \$122 million in payments from the City under its City contracts, \$5.7 million of which was paid by Public Works.³⁶

Most importantly, the Director of Public Works plays a key role in the process by which the City sets the rates paid for garbage collection.³⁷ According to the Public Works website, "[t]he Director of

³² Public Integrity Report 2, slide 31.

³³ See Attachment 1. This document is a public record obtained by NBC Bay Area from Public Works through a public records request.

³⁴ See Attachment 2, from SAN FRANCISCO EXAMINER, Joe Fitzgerald Rodriguez, *Lefty O'Doul's charity used city contractor donations to pay for Public Works party*, Feb. 5, 2020, available at <https://www.sfexaminer.com/news-columnists/lefty-odouls-charity-used-city-contractor-donations-to-pay-for-public-works-party/>. This document was obtained by the San Francisco Examiner from a confidential source.

³⁵ See Letter from Larry Stringer to Mark Arsenault, April 1, 2015, Attachment 3, available at <https://www.documentcloud.org/documents/6989365-Grand-Jury-Subpoena-CCSF-DPW.html>; SAN FRANCISCO CHRONICLE, Dominic Fracassa, *3 more SF city departments hit with subpoenas in expanding Nuru corruption probe*, July 12, 2020, available at <https://www.sfchronicle.com/bayarea/article/3-more-San-Francisco-city-departments-hit-with-15410491.php>.

³⁶ Public Integrity Report 2, slide 28.

³⁷ See San Francisco Refuse Collection and Disposal Ordinance, available at <http://www.sfpublishworks.org/sites/default/files/2063-1932%20Ordinance.pdf>.

San Francisco Public Works is charged with reviewing applications for adjustments in residential refuse rates, holding public hearings, and issuing a report and recommended order on whether rates are just and reasonable.”³⁸ Clearly, the actions of the Director of Public Works and his subordinates have a major financial impact on Recology, the City’s garbage collection contractor, and Recology seeks to influence the Director through applications for rate adjustments. Thus, any instance where a Public Works employee solicits a payment from Recology carries a significant ethics risk.

The use of behested payments to solicit money from contractors on multiple occasions, and using multiple nonprofit organizations as intermediaries, indicates that this was not an isolated incident nor the result of mere negligence on the part of Nuru or Public Works employees. Rather, these incidents indicate that behested payments are a known mechanism by which City officials and employees can solicit payments from persons with business before them. In a department where the “tone at the top” does not promote ethical conduct, this practice can become widespread.³⁹

From the perspective of the individuals and companies being asked to make behested payments, this practice can appear to be a shakedown, in which the payment is expected as a cost of doing business with the City. This is the essence of a pay-to-play arrangement. Additionally, when the behested payments are ultimately used to benefit the officials or employees who ask for them, they circumvent long standing gift rules that were established to address the risk of pay-to-play. As contractors doing business with the Department of Public Works, the companies that funded the holiday parties, picnics, and Public-Works-branded merchandise would have been prohibited from giving gifts directly to Nuru or other department employees.⁴⁰ To close this loophole, behested payment laws should explicitly prohibit officials and employees from asking for behested payments in any situation where a gift would be prohibited. Rules should also restrict officials and employees from directing payments to organizations that will ultimately provide payments back to the officials or employees. These basic guardrails are needed to prevent the most egregious conduct while still allowing charitable and governmental fundraising to occur.

3. *Behested Payments and Restricted Sources*

City law prohibits officials from soliciting or accepting gifts from restricted sources or registered lobbyists.⁴¹ A restricted source is any person doing or seeking to do business with the official’s department and any person who has sought in the last twelve months to influence the official’s administrative or legislative actions.⁴² However, City law does not expressly prohibit officials from asking restricted sources or lobbyists to make behested payments. This creates a loophole in

³⁸ San Francisco Public Works, Refuse Collection and Disposal Rates (Garbage Rates), *available at* <http://www.sfpublishworks.org/refuserates>.

³⁹ *See id.* at slide 30. “‘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.”

⁴⁰ *See* Campaign & Gov. Conduct Code § 3.216(b). Exceptions to this rule exist for gifts of \$25 or less, gifts of food and drink “to be shared in the office,” and “[f]ree attendance at a widely attended convention, conference, seminar, or symposium.” *See* Ethics Commission Regulation 3.216(b)-5(a)—(c).

⁴¹ *Id.* at § 3.216(b), 2.115(a)(2).

⁴² *Id.* at § 3.216.

existing gift laws, which can be demonstrated with an example that is apparent through public lobbyist and behested payment disclosures.

Staff reviewed a set of behested payment filings (FPPC Form 803) filed by then-District 2 Supervisor Mark Farrell. During the period reviewed by Staff, April 2015 to June 2018, Farrell behested \$882,500 to Parks Alliance.⁴³ Staff looked at this set of behested payments because of the involvement of Parks Alliance during the same time that Public Works is known to have directed payments to that some organization. Staff also reviewed public lobbyist disclosures filed during that time to determine whether any of the behested payments solicited by Farrell were made by persons that were restricted sources because of their attempts to influence Farrell. Although these solicitations would not necessarily have been prohibited, it would indicate a problematic feature of City ethics laws, since Farrell would have been prohibited from soliciting or accepting a gift from such persons.

Staff found four separate series of events that illustrate the problem surrounding behested payments solicited from restricted sources. The first incident involves AT&T. On October 18, 2016, registered lobbyist Boe Hayward contacted Farrell on behalf of AT&T to discuss the company's fiber optic network. Hayward was working for Lighthouse Public Affairs at that time.⁴⁴ That same day, Farrell introduced legislation to prevent landlords from interfering with a tenant's choice of internet service providers.⁴⁵ On November 14, 2016, Hayward again contacted Farrell on behalf of AT&T, this time to support the service provider ordinance.⁴⁶ That same day, Lighthouse Public Affairs made a \$5,000 payment at Farrell's request to Parks Alliance.⁴⁷

A similar pattern occurred involving Facebook. On February 10, 2016, Boe Hayward contacted Farrell on behalf of Facebook to advocate for Farrell's support on issues regarding private employee shuttles.⁴⁸ Three months later, Facebook made a \$10,000 payment to Parks Alliance at Farrell's behest.⁴⁹

Likewise, the same pattern occurred twice with the San Francisco Association of Realtors, first in 2015 and later in 2016. Between February 23, 2015 and May 26, 2015, lobbyists Jay Cheng and Mary Jung contacted Farrell on behalf of the Association a combined six times.⁵⁰ Less than four months later, on September 10, 2015, the Association made a \$10,000 payment to Parks Alliance at Farrell's behest.⁵¹ This pattern was repeated in 2016. On January 12, 2016, Cheng contacted Farrell

⁴³ See Chart 1, a spreadsheet created by Ethics Commission Staff using data from Mark Farrell's Form 803 disclosures during the review period.

⁴⁴ See Lobbyist Reports, Attachment 4.

⁴⁵ See File 161110, History, *available at* <https://sfgov.legistar.com/LegislationDetail.aspx?ID=2863893&GUID=E010FDC6-4024-4BA7-B282-C0F9DE32D9F4>.

⁴⁶ See Lobbyist Reports, Attachment 4.

⁴⁷ See Farrell Form 803 filed January 30, 2017, Attachment 5.

⁴⁸ See Lobbyist Reports, Attachment 4.

⁴⁹ See Farrell Form 803 filed January 30, 2017, Attachment 5.

⁵⁰ See Lobbyist Reports, Attachment 4.

⁵¹ See Farrell Form 803 filed October 8, 2015, Attachment 5.

on the Association’s behalf regarding three separate issues.⁵² Eight months later, on September 15, 2016, the Association made a \$10,000 payment to Parks Alliance at Farrell’s request. In each of these instances, the entity making the payment at Farrell’s behest had sought to influence his official actions within the twelve months prior to the payment. The entities were therefore restricted sources, and Farrell would have been prohibited from soliciting or accepting a gift from them. However, because of the existing gap in ethics laws, Farrell was not prohibited from asking the entities to make a payment to a third party. This is problematic because the same policy rationales that underly the restricted source rule (in particular, preventing pay-to-play and its appearance) also apply to behested payments. If officials or employees request payments from people seeking to influence, it can create a perception by those people and by the public that the payments are solicited in exchange for the official’s or employee’s support.

For that reason, this report recommends a rule prohibiting City officials and employees from asking restricted sources and other interested parties to make behested payments. This would extend the same basic ethics protections that exist for gifts into the realm of behested payments while still allowing officials to engage in fundraising. For example, of the \$882,500 Farrell solicited for Parks Alliance, only a small portion appears to have been from interested parties. The vast majority of his fundraising activity would still be allowed under the proposed rule.

4. *Behested Payments – Los Angeles FBI Investigation*

A major, ongoing FBI corruption investigation in Los Angeles indicates that behested payments played a role in an alleged pay-to-play scheme discovered by the Justice Department. On June 23rd, FBI agents arrested Los Angeles City Councilmember Jose Huizar on a federal racketeering charge that includes allegations of bribery, extortion, money laundering, and honest services fraud.⁵³ The criminal complaint against Huizar states that he “operated a pay-to-play scheme in the City, utilizing and commodifying the powerful Council seat of CD-14, whereby he solicited and accepted financial benefits from ... developers with projects in the City in exchange for favorable official actions.”⁵⁴ Among other alleged crimes, Huizar, as chair of Los Angeles’ Planning and Land Use Management Committee, allegedly acted favorably toward parties that had given him gifts or made payments to third parties at his behest.⁵⁵ According to the FBI, one of the tactics used by Huizar and his associates to hide their activity was “directing payments to family members, associates, and entities to avoid creating a paper trail between the developers, their proxies, and public officials.”⁵⁶

⁵² See *id.* The issues were in-law/secondary unit legislation, an inclusionary zoning ballot measure, and a housing density bonus.

⁵³ U.S. Attorney’s Office, Central District of California, *Los Angeles City Councilman Jose Huizar Arrested on Federal RICO Charge that Alleges He Agreed to Accept At Least \$1.5 Million in Illicit Benefits*, June 23, 2020, available at <https://www.justice.gov/usao-cdca/pr/los-angeles-city-councilman-jose-huizar-arrested-federal-rico-charge-alleges-he-agreed>.

⁵⁴ *U.S. v. Jose Luis Huizar*, Case No. 2:20-mj-02910, Criminal Complaint and Affidavit of FBI Special Agent Andrew Civetti in Support of Criminal Complaint (C.D. Cal. June 22, 2020), available at <https://www.justice.gov/usao-cdca/press-release/file/1287936/download> (hereinafter “Huizar Criminal Complaint”), ¶ 3.

⁵⁵ *Id.* at § 35(b).

⁵⁶ *Id.* at ¶ 35(c).

The complaint alleges that Huizar solicited behested payments from developers with business before the city, including those with matters before the Planning and Land Use Management Committee. Huizar directed the payments to a private high school that employed his wife as a fundraiser.⁵⁷ The Justice Department alleges that this practice was part of Huizar’s pay-to-play enterprise. According to the complaint, Huizar and his special assistant George Esparza solicited behested payments from multiple companies with matters pending before the Councilmember to Bishop Salesian High School.⁵⁸ In exchange, Huizar would help the donors with matters pending before the City. According to the Los Angeles Times, Huizar also solicited behested payments from billboard companies during the time that the Planning and Land Use Management Committee was considering regulations on digital billboards.⁵⁹ The Times also reported that Huizar and members of his staff asked for behested payments from multiple registered lobbyists.⁶⁰

These allegations lay bare the potential ethical issues surrounding behested payments from interested parties. They also indicate that this problem is not unique to San Francisco. When government officials and employees are allowed to solicit behested payments from individuals or entities that have matters before them, or to entities that in turn make payments to the behesting official, this opens the door to the use of behested payments as a channel for pay-to-play schemes. Huizar allegedly requested payments from lobbyists and companies that sought favorable outcomes from him. Asking for behested payments from these interested parties carries an inherent risk of pay-to-play because it creates the perception that the payments are required in order to obtain favorable outcomes. Further compounding the unethical nature of the requests, Huizar’s wife received \$150,000 in compensation from the recipient of the behested payments.⁶¹ This fact adds an element of personal benefit on Huizar’s part and further increases the risk of pay-to-play.

The FBI investigation in Los Angeles revealed ethics risks associated with behested payments that are equally present in San Francisco. To avoid a similar situation occurring in San Francisco, the City should create guardrails on fundraising by officials and employees that reduce the most serious risks of pay-to-play while still preserving the ability to engage in fundraising activities.

5. *Behested Payments – Calderon FBI Investigation*

In 2014, California State Senator Ron Calderon was arrested by the FBI and indicted on multiple corruption charges including honest services fraud, bribery, and, money laundering.⁶² In 2016,

⁵⁷ Huizar Criminal Complaint at ¶¶ 310—312. *See also* LOS ANGELES TIMES, Adam Elmahrek, David Zahniser, Emily Alpert Reyes, L.A. *Councilman’s Wife Was a Paid Fundraiser. Ex-Aides Say He Assigned Them to Help*, Nov. 30, 2018, available at <https://www.latimes.com/local/lanow/la-me-ln-huizar-wife-fundraising-20181130-story.html> (hereinafter “Elmahrek, Zahniser, and Reyes”).

⁵⁸ *See* Huizar Criminal Complaint at ¶¶ 310—312.

⁵⁹ Elmahrek, Zahniser, and Reyes.

⁶⁰ *Id.*

⁶¹ *See* Huizar Criminal Complaint at ¶ 15.

⁶² Available at <https://archives.fbi.gov/archives/losangeles/press-releases/2014/california-state-senator-ronald-calderon-charged-with-taking-bribes-in-exchange-for-official-acts-on-behalf-of-hospital-owner-and-independent-film-studio-that-was-actually-an-fbi-front>.

Calderon pleaded guilty and was sentenced to forty-two months in prison.⁶³ Among other schemes, Senator Calderon had solicited a behested payment from undercover FBI agents to a nonprofit organization called Californians for Diversity. Calderon solicited the behested payment in exchange for his support of legislation enhancing film production tax credits. Calderon and his brother, former State Assemblymember Tom Calderon, controlled Californians for Diversity and used the behested funds to pay themselves.⁶⁴

This incident represents the worst ethical risk that is present when officials are free to solicit payments to organizations from which they receive income. Such behested payments are circular in nature because the official requesting the payment ultimately benefits economically from the payment. Because of the personal financial benefit that is present, these behested payments carry a significant risk of pay-to-play and the circumvention of existing gift laws. In the worst cases, such behested payments can be a conduit for bribes, as was the case with Calderon. To avoid this pattern in San Francisco, a basic conflict-of-interest law is needed to prohibit officials from requesting donations to entities that pay them income.

III. Legislative Recommendations

To address the ethics issues regarding behested payments identified in Section II, Staff recommends two new conflict-of-interest rules regarding behested payments. First, officials and employees should be prohibited from soliciting behested payments from interested parties. Second, they should be prohibited from soliciting behested payments to entities that pay them income. These rules will create basic guardrails on fundraising activities that prohibit the most problematic conduct while preserving the ability of officials and employees to engage in most fundraising activities.

Subsection A provides an overview of the recommendations in outline form. Subsection B explains the rationales for each recommendation. Subsection C recommends next steps for this phase of the project.

⁶³ Available at <https://www.justice.gov/usao-cdca/pr/former-state-senator-ronald-calderon-sentenced-42-months-federal-prison-receiving-over>

⁶⁴ U.S. Attorney's Office, Central District of California, *Former State Senator Ronald Calderon Agrees to Plead Guilty to Federal Corruption Charge; Admits Receiving Tens of Thousands of Dollars in Bribes*, June 13, 2016, available at <https://www.justice.gov/usao-cdca/pr/former-state-senator-ronald-calderon-agrees-plead-guilty-federal-corruption-charge>.

A. Overview of Recommendations

Solicitation of Behested Payments from Interested Parties

1. Prohibit City officials and employees from soliciting behested payments from interested parties
2. *Define officials* to include all City elected officials, members of boards and commissions, and department heads
3. *Define employees* to include all form 700 filers
4. Define *interested parties* to include:
 - a. parties and participants to City proceedings involving permits, licenses, entitlements for use, and administrative enforcement
 - b. City Contractors, including:
 - i. all City contractors who (a) are parties to a contract that was approved by the elected official in question, or (b) are parties to a contract with the department of the commissioner, board members, department head, or employee in question
 - ii. all parties that have submitted a proposal for such a contract, and
 - iii. all affiliates of the contracting or bidding entity
 - c. registered lobbyists, and
 - d. all *restricted sources* under section 3.216, including persons who have sought within the last twelve months to influence the legislative or administrative action of the officer or employee in question
5. Create an exception to allow officers or department heads to solicit monetary payments from interested parties to an established city gift fund under Administrative Code section 10.100 et seq.

Solicitation of Behested Payments to an Entity that is a Source of Income for the Official

1. Prohibit officials and employees from soliciting behested payments from any source to an entity that is a source of income for the official or the official's spouse
2. *Define officials* to include all City elected officials, members of boards and commissions, and department heads
3. *Define employees* to include all form 700 filers
4. Define *income* to mean any economic interest reportable on the Form 700 Statement of Economic Interests

Miscellaneous

1. Expand reporting of behested payments under section 3.610 to require reporting by department heads when soliciting a behested payment from an interested party to a City gift fund
2. Make other minor changes to 3.600 et seq. consistent with these recommendations

B. Policy Rationales for Recommendations

1. *Solicitation of Behested Payments from Interested Parties*

City law currently prohibits City officials and employees from soliciting or accepting gifts or political contributions from certain sources. No official or employee may solicit or accept a gift from a person who does business or is seeking to do business with their department, nor any person who has sought to influence their official actions in the last twelve months.⁶⁵ No official may solicit or accept a gift from a registered lobbyist, nor a contribution over \$250 from a party to a proceeding before them.⁶⁶ And, no elected official may solicit or accept a contribution from a contractor whose contract they approved.⁶⁷

Each of these rules serves the important purpose of preventing officials and employees from soliciting or accepting payments from those who seek favorable official actions from them. However, no such rule currently exists to address the same concern regarding behested payments. This creates a significant risk of behested payments being utilized to circumvent existing ethics laws. This problem is apparent in the way Mohammed Nuru and Nick Bovis discussed using a behested payment to secure the assistance of a commissioner in securing a City contract and in the way Public Works employees, including Nuru, sought behested payments from companies that do business with their department. Such behested payments were one of the ways Los Angeles City Councilmember Huizar enticed developers to make payments to his chosen organizations. And, disclosures show that at least one elected official in San Francisco has solicited behested payments from people and organizations that were seeking his support.

In its letter to the Commission dated November 6, 2020 (Attachment 6), Campaign Legal Center (CLC) states that “[t]he current behested payment rules in San Francisco ... create an exception to the gift law through behested payments. This becomes an exception that swallows the rule when a lobbyist or other restricted source can provide an official with unlimited donations to a third-party of the official’s choice.” CLC recommends that a rule against soliciting behested payments from interested parties be created to close this loophole.

As part of its public integrity review, the Controller’s office reviewed the relationship between Public Works and Parks Alliance. Based on what it found, the Controller’s office recommends that non-elected department heads and employees be prohibited from soliciting behested payments from interested parties.⁶⁸ With respect to Public Works, the Controller’s office concluded that “[w]hen 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.”⁶⁹ In the same vein, the behested payments solicited by Councilmember Huizar and the scheme by Nuru and Bovis to bribe an Airport commissioner with a behested payment indicate that the same concern is at play for elected officials and commissioners.

⁶⁵ S.F. Campaign & Gov. Conduct Code § 3.216(b).

⁶⁶ *Id.* at § 2.115(a)(2); Cal. Gov. Code §84308(b).

⁶⁷ S.F. Campaign & Gov. Conduct Code § 1.126(d).

⁶⁸ Controller Report 2, slide 45.

⁶⁹ *Id.* at slide 29.

Other jurisdictions have already adopted such a rule. Drawing on reviews of behested payment laws performed by the California Fair Political Practices Commission and Campaign Legal Center, Staff found that Chicago, Philadelphia, Maryland, New York State, New Mexico, Alabama, the Federal Executive Branch, the United States House of Representatives, and the United States Senate each have a rule prohibiting the solicitation of behested payments from certain interested parties.⁷⁰

It is important to note that this rule would only prohibit officials and employees from soliciting behested payments from interested parties. It would not affect their ability to ask for donations from anyone who is not an interested party. Thus, officials and employees would be free to raise funds for charities and other community organizations from the vast majority of the public. They would only have to refrain from asking for payments from interested parties. This tailoring of the rule ensures that the most problematic conduct is prohibited, while the vast majority of fundraising activity, which does not present the same ethics risks, can continue unaffected.

Lastly, the compliance burdens of this new rule would be low because the rule is based on existing ethics rules that are well developed and with which officials and employees should already be familiar. *Interested party* would be defined based on existing concepts defined in the law: City contractors and their affiliates,⁷¹ restricted sources,⁷² parties and participants to City proceedings,⁷³ and registered lobbyists.⁷⁴ Gift and contribution laws already apply to these categories of sources, so building the behested payment rule on top of them will make education and compliance easier.

The policy rationales for the recommended rule already underly longstanding rules regarding gifts and contributions. Other jurisdictions have already adopted some form of this rule, and the Controller has recommended that such a rule be created in San Francisco. The ethical issues that prevail without such a rule have become clear in the wake of two FBI corruption probes in California that involved behested payments from interested parties. The creation of a rule against soliciting behested payments from interested parties is warranted, timely, and necessary to create a basic ethical guidepost and prevent similar incidents in the future.

2. *Solicitation of Behested Payments to an Entity that is a Source of Income for the Official*

As discussed, gift laws prohibit officials and employees from accepting gifts from certain sources and limit the value of gifts that they can receive from a source in single year. However, existing laws do not adequately restrict officials and employees from soliciting payments to entities that are a source of income for the official or employee.

⁷⁰ See CAL. FAIR POLITICAL PRACTICES COMMISSION, Summary of Behested Payment Related Provisions in other States and Local Jurisdictions, available at <http://fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/lawandpolicy/2020/august/Behested%20Payment%20Out%20of%20State%20Research.pdf>. See Campaign Legal Center Letter, Attachment 6.

⁷¹ See Campaign & Gov. Conduct Code § 1.126.

⁷² See *id.* at § 3.216.

⁷³ See Cal. Gov. Code § 84308.

⁷⁴ See Campaign & Gov. Conduct Code § 2.115.

In the case of Public Works, Nuru and other Public Works employees solicited behested payments to various Parks Alliance subaccounts. The employees were able to direct disbursements from the accounts, and many disbursements were made directly to Public Works employees.⁷⁵ The Controller concluded that the payments appeared to be reimbursements for departmental expenses but noted that, if any of the payments turned out to be gifts, this would raise ethical concerns.⁷⁶

This would be problematic because the officer or employee in question would be indirectly receiving a personal financial benefit as a result of the behested payment. This potentially disguises the true source of a gift and the amount of money that the officer or employee is receiving from that source. A notable example is Councilmember Jose Huizar directing payments to the private high school for which his wife was a paid fundraiser. Huizar's wife received income from the school, and this income constituted a personal economic interest for Huizar.⁷⁷ Huizar's indirect personal benefit from the behested payments he directed to the school factored into his pay-to-play scheme involving developers. Likewise, Senator Ron Calderon utilized a behested payment to a nonprofit controlled by his brother to launder a bribe from an undercover FBI agent.

For this reason, this report recommends a rule that prohibits officials and employees from directing behested payments to organizations from which they or a spouse receive income. But, the rule would not apply if the official or employee or their spouse receives no income from the organization. For example, if an official served as an uncompensated volunteer board member for a nonprofit, the official could continue to raise funds for the organization. The rule would thus target the most problematic situations while still allowing officials and their spouses to engage in volunteer nonprofit opportunities, including fundraising for such organizations.

For example, the rule would not have prohibited Mark Farrell in general from directing behested payments to Parks Alliance even though Farrell's wife, Liz Farrell, was the chair of the Parks Alliance Board of Trustees during the time that Farrell solicited payments totaling \$882,500 to the organization.⁷⁸ However, assuming that board members of the nonprofit are not compensated, this fact would not create a financial interest in Parks Alliance on the part of Mark Farrell. Farrell would therefore have still been allowed to fundraise for Parks Alliance. (However, under the rule recommended in the previous subsection, Farrell would have been prohibited from soliciting behested payments from *interested parties* to Parks Alliance or any other recipient.)

The compliance burden of this rule would be minimal. The rule would only apply to officials and employees who are already required to file the Form 700 Statement of Economic Interests. The Form 700 requires filers to list all organizations from which they or their spouse receives income. Since the rule would only prohibit them from soliciting behested payments to organizations that are reportable sources of income for them, officials and employees will already have a list of organizations for which they cannot solicit behested payments.

⁷⁵ Public Integrity Report 2, slide 2.

⁷⁶ *Id.* at slide 25.

⁷⁷ Cal. Gov. Code § 82030 (*income* includes "any community property interest in the income of a spouse").

⁷⁸ See Parks Alliance, Board of Trustees, available at <https://sanfranciscoparksalliance.org/board/>.

Other jurisdictions already have such a rule in place. New York City, New York State, Maryland, Alabama, the Federal Executive Branch, the United States House of Representatives, and the United States Senate have some form of this rule in effect.⁷⁹

C. Next Steps for Phase I of the Project

Staff recommends that the Commission approve a motion approving the set of recommendations listed above.

Legislation that contains some of these recommendations has been introduced by Supervisor Matt Haney and is attached to this report as Attachment 7. Staff has been in close conversation with Supervisor Haney's Staff and will continue to collaborate on the legislation and support amendments that are in line with the Commission's policy decisions and at the guidance of the Chair. Because behested payment rules are located in Article III, Chapter 6 of the Code, Commission approval of legislation in this area is not required. Staff will continue to update the Commission on the status of the legislation as part of the ongoing project.

⁷⁹ See Campaign Legal Center Letter, Attachment 6; CAL. FAIR POLITICAL PRACTICES COMMISSION, Summary of Behested Payment Related Provisions in other States and Local Jurisdictions, *available at* <http://fppc.ca.gov/content/dam/fppc/NS-Documents/AgendaDocuments/lawandpolicy/2020/august/Behested%20Payment%20Out%20of%20State%20Research.pdf>.

ATTACHMENT 1

iMessage with +1 [redacted] Privacy

11/26/19, 1:46 PM

Nick thanks for the message return call Ron

12/2/19, 8:18 AM

Nick I have gotten commitments from Webcor, Clark, and Pankow for Lefty Odoul's Foundation. Please confirm receipt. Thanks Ron

[Profile] Jes W. Pedersen

[Profile] Bret Firebaugh

[Profile] Marivic Chennault

Thx Nick!

I call Jes and bret and left them messages

Great thx!

12/4/19, 12:25 PM

Marivic's phone # is she just tried calling you

12/9/19, 8:18 AM

I talked to Vicki, she will check with Christopher on receipt of information. Did you mail or email the form?

12/9/19, 2:47 PM

Heard from Vicki sounds like you and Christopher connected today. Hope you were able to close the loop on information. I will be seeing Pankow later today

12/10/19, 8:10 AM

Nick, I pinged Vicki she has not received the form so stuck until it's returned

I never received one here's my email [redacted]
Thank you

12/10/19, 10:06 AM

They sent it please confirm receipt

Yes

I filled it out and send it back to him

It was a six page form that was mainly for vendors so I filled out the best I could for a nonprofit donation

Thx

12/10/19, 2:24 PM

Process in progress when approved it will be overnighted to your foundation address

12/12/19, 9:30 AM

Nick let me know if you received anything. Any updates?

Not yet I will check mail today

Ok should be overnight service

Ok

12/12/19, 12:27 PM

I believe you will receive tomorrow

Ok

12/13/19, 12:55 PM

Receive anything?

Not yet

12/13/19, 3:02 PM

Sorry, I can't talk right now.

Delivered

No problem I was just letting you know I haven't seen anything come by yet I'm gonna leave here in an hour or so

Redaction Log

Reason	Page (# of occurrences)	Description
Privacy	1 (1)	Due to privacy concerns, personal information, such as personal phone numbers, cell numbers and email addresses, has been redacted from the documents that we are making available to you. We redacted this personal information pursuant to Section 6254(c) and Section 6254(k) of the California Public Records Act and Article 1, Section 1 of the California Constitution.

ATTACHMENT 2

Nick Bovis

October 30, 2017 at 3:29 PM

Re: Donation

To: [REDACTED]

That is for the party we have to do for Dpw holiday party

[REDACTED]

Re: Donation

October 30, 2017 at 3:23 PM

To: Nick Bovis

Wow! that's great 15K for the foundation.

[REDACTED]

Nick Bovis

October 28, 2017 at 1:05 PM

Donation

To: [REDACTED]

Check Image



RECOLOGY INC.
50 CALIFORNIA ST 24TH FLOOR
SAN FRANCISCO CA 941119796

Wells Fargo Bank, N.A.
66-156
531

VENDOR: 5070673

Check Date: 10/17/17

Check No: 11834223

PAY FIFTEEN THOUSAND AND 00/100*****

AMOUNT

\$****15,000.00

MADE ENTIRE PAY

PAY
TO THE
ORDER OF

LEFTY ODOULS FOUNDATION FOR KIDS

[REDACTED]

Michael J. [Signature]

Mark A. Lomela

[REDACTED]

ATTACHMENT 3



April 1, 2015

Edwin M. Lee
Mayor

Mohammed Nuru
Director

Larry Stringer
Deputy Director

Office of the Deputy Director
for Operations

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

sfpublicworks.org
[facebook.com/sfpublicworks](https://www.facebook.com/sfpublicworks)
twitter.com/sfpublicworks

Mark Arsenault, Vice President and General Manager
Recology
250 Executive Park Boulevard, Suite 2100
San Francisco, CA 94134

Dear Mr. Arsenault:

San Francisco Public Works is recognizing National Public Works Week a little early this year by hosting a variety of event from April 20th through April 24th. These include our annual Operations Open House on Thursday, April 23rd and Employee Appreciation Picnic on Friday, April 24th from 3pm to 7pm at the Louis Sutter Playground in sunny McLaren Park.

The picnic is management's opportunity to thank staff for all the hard work they have contributed throughout the year. We will recognize individuals and groups of employees that have gone beyond the call of duty to complete projects and provide exceptional service to the public. The Operations Open House is an opportunity for local students and participants in workforce development programs to learn about careers in the trades and crafts. The Open House provides a rich experience for students looking into alternative career paths; participants get to interact with our skilled labor staff on hands-on activities and discuss career options with union representatives.

Since Recology continues to be an outstanding partner, we hope that your management can join us at the celebrations. We also hope that we can count on your support to make the Open House and Employee Appreciation Picnic a success.

If Recology is able to help, your tax-deductable donation can be sent to San Francisco Public Works' fiscal sponsor, the San Francisco Parks Alliance, 1663 Mission Street, Suite 320, San Francisco, CA 94103. Their tax-id number is 23-7131784, and you can reference "Public Works Week" with your donation.

If you have any questions, please call us at (415) 695-2003. To RSVP for the picnic, email Jerad Weiner of my staff at Jerad.Weiner@sfdpw.org. I look forward to seeing you at one of these events.

Sincerely,

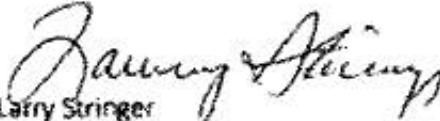

Larry Stringer
Deputy Director for Operations

CHART 1

CHART 1 - Payments Made to Parks Alliance at the Behest of Mark Farrell

Date	Payer	Amount	City	State	Zip
10/24/2017	1634 PINE STREET, LLC	5,000.00	SAN FRANCISCO	CA	94111
10/17/2017	ANONYMOUS	10,000.00			
10/6/2016	Anonymous	5,000.00			
10/15/2015	AT&T	15,000.00	San Francisco	CA	94103
9/26/2017	AVG LLC	5,000.00	SAN FRANCISCO	CA	94111
9/30/2015	Bay Club San Francisco	5,000.00	San Francisco	CA	94111
10/2/2015	BCSF, Inc.	5,000.00	San Francisco	CA	94103
10/14/2016	BCSF, Inc.	5,000.00	San Francisco	CA	94103
	CALIFORNIA PACIFIC MEDICAL				
6/2/2017	CENTER	5,000.00	SAN FRANCISCO	CA	94107
9/28/2015	ClearRock Capital	10,000.00	San Francisco	CA	94111
9/22/2015	CVS Pharmacy	5,000.00	Woonsocket	RI	2895
2/16/2017	DIANE B. WILSEY	100,000.00	SAN FRANCISCO	CA	94115
8/23/2016	Diane B. Wilsey	10,000.00	San Francisco	CA	94115
10/1/2015	Diane Wilsey	10,000.00	San Francisco	CA	94115
9/17/2015	Dignity Health	5,000.00	San Francisco	CA	94109
9/7/2016	Dignity Health	5,000.00	San Francisco	CA	94107
10/2/2015	Donald Carmignani	10,000.00	San Francisco	CA	94123
5/12/2016	Facebook, Inc.	10,000.00	Menlo Park	CA	94025
9/24/2015	Firefighters Local 798	5,000.00	San Francisco	CA	94158
8/17/2016	Fisher Family Fund	10,000.00	San Francisco	CA	94111
10/20/2017	FIVEPOINT	5,000.00	SAN FRANCISCO	CA	94104
9/1/2016	Fivepoint,	5,000.00	San Francisco	CA	94104
10/13/2015	Golden State Warriors	5,000.00	Oakland	CA	94607
10/20/2016	Golden State Warriors	5,000.00	Oakland	CA	94607
12/7/2016	GOOGLE	10,000.00	MOUNTAIN VIEW	CA	94043
8/8/2017	GOOGLE, INC.	10,000.00	MOUNTAIN VIEW	CA	94043
10/2/2015	Grass Roots Non-Profit Collective	5,000.00	San Francisco	CA	94109
10/10/2015	Hallinan & Hallinan	5,000.00	San Francisco	CA	94109
12/16/2016	HOUSING NOT TENTS - YES ON Q	30,000.00	SAN FRANCISCO	CA	94114
9/26/2015	Joseph & Edith Tobin	5,000.00	San Francisco	CA	94109
9/13/2016	Kaiser Foundation Health Plan	5,000.00	San Francisco	CA	94105
6/14/2017	KAISER PERMANENTE	5,000.00	SAN FRANCISCO	CA	94102
12/7/2017	Katharine M. Albright	5,000.00	San Francisco	Califo	94118-20
1/11/2017	KATHLEEN S. ANDERSON	5,000.00	SAN FRANCISCO	CA	94123
10/13/2015	Lennar Urban	5,000.00	San Francisco	CA	94104
11/14/2016	Lighthouse Public Affairs	5,000.00	San Francisco	CA	94133
10/4/2017	LYFT	5,000.00	SAN FRANCISCO	CA	94107
10/13/2015	Mark Perry	10,000.00	Menlo Park	CA	94025
6/22/2017	MICROSOFT CORPORATION	10,000.00	MOUNTAIN VIEW	CA	94043
12/7/2017	Pacific Gas and Electric Company	25,000.00	San Francisco	Califo	94105
11/8/2016	Pacific Gas and Electric Company	25,000.00	San Francisco	CA	94105
10/3/2015	Prado Group	12,500.00	San Francisco	CA	94108
7/11/2017	RANDI FISHER	5,000.00	SAN FRANCISCO	CA	94115
9/14/2015	Recology	10,000.00	San Francisco	CA	94111
6/2/2017	RECOLOGY SAN FRANCISCO	15,000.00	SAN FRANCISCO	CA	94111

11/2/2016	Recology San Francisco	10,000.00	San Francisco	CA	94134
8/4/2016	Ron Conway	10,000.00	San Francisco	CA	94111
8/16/2017	SAN FRANCISCO ASSOCIATION OF REALTORS	10,000.00	SAN FRANCISCO	CA	94102
9/10/2015	San Francisco Association of Realtors	10,000.00	San Francisco	CA	94102
9/15/2016	San Francisco Association of Realtors	10,000.00	San Francisco	CA	94102
9/13/2016	San Francisco Forty Niners	10,000.00	Santa Clara	CA	95054
6/2/2017	SAN FRANCISCO FORTY-NINERS	10,000.00	SANTA CLARA	CA	95054
9/11/2017	SAN FRANCISCO POLICE OFFICERS ASSOCIATION	5,000.00	SAN FRANCISCO	CA	94103
9/14/2015	San Francisco Police Officers Association	5,000.00	San Francisco	CA	94103
9/26/2015	San Francisco Waterfront Partners	5,000.00	San Francisco	CA	94111
9/30/2015	Schwab Charitable	25,000.00	San Francisco	CA	94105
10/16/2015	Thomas Coates	125,000.00	San Francisco	CA	94111
7/25/2017	THOMAS J. COATES	125,000.00	SAN FRANCISCO	CA	94111
9/9/2015	TMG Partners	5,000.00	San Francisco	CA	94104
9/24/2015	Tom & Linda Coates	25,000.00	San Francisco	CA	94111
9/11/2015	Trumark Urban Partners (TUP Webster LLC)	5,000.00	San Francisco	CA	94105
8/25/2016	Trumark Urban Partners (TUP Webster LLC)	5,000.00	San Francisco	CA	94109
7/18/2017	U.A. LOCAL #38	5,000.00	SAN FRANCISCO	CA	94103
7/31/2017	WELLS FARGO FOUNDATION	5,000.00	SAN FRANCISCO	CA	94104
TOTAL		882,500.00			

ATTACHMENT 4

Contact of Public Official Details

Date	09/28/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	PRESIDIO BAY VENTURES, LLC
Client Address	185 BERRY STREET, SUITE 1200 SAN FRANCISCO, CA, 94107
Client Phone	(760) 214-8753
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Planning and Building Permits
Issue	2670 GEARY STREET
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

 Directories
Individual Lobbyists
Lobbyist Clients
Lobbying Firms and Employers
Contacted Public Officials
Lobbying Subject Areas
All Lobbyist Filings
 Transactions
Activity Expenses
Political Contributions
Contacts of Public Officials
Payments Promised by Clients
Employment of City Officers or Employees
 View Expenditure Lobbyist Public Site

About the Ethics Commission

The Ethics Commission was established by San Francisco voters in November 1993, and serves the public, City employees and officials, and local candidates through education and enforcement of governmental ethics laws, including public information, reports and advice; campaign disclosure and economic interests filings; lobbyist and campaign consultant registration and reporting; public financing for City campaigns; audits, investigations and enforcement.

[Learn More](#)

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Contact Us

Monday - Friday 8:00 A.M. to 5:00 P.M.

-  [25 Van Ness Ave., Suite 220, San Francisco, CA 94102](#)
-  [415-252-3100](#)
-  [415-252-3112](#)
-  ethics.commission@sfgov.org
-  [Make a Records Request](#)

Connect



Resources

- [Federal Election Commission](#)
- [Fair Political Practices Commission](#)
- [California Secretary of State](#)
- [Cal-Access](#)
- [City & County of San Francisco](#)
- [San Francisco Department of Elections](#)
- [San Francisco City Attorney's Office](#)
- [SF Open Data](#)

Contact of Public Official Details

Date	09/14/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	NICK PODELL COMPANY
Client Address	100 DRUMM STREET SAN FRANCISCO, CA, 94111
Client Phone	(415) 296-8800
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Planning and Building Permits
Issue	2070 BRYANT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

 Directories
Individual Lobbyists
Lobbyist Clients
Lobbying Firms and Employers
Contacted Public Officials
Lobbying Subject Areas
All Lobbyist Filings
 Transactions
Activity Expenses
Political Contributions
Contacts of Public Officials
Payments Promised by Clients
Employment of City Officers or Employees
 View Expenditure Lobbyist Public Site

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-  [415-252-3112](#)
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-  [Make a Records Request](#)

Connect



Resources

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- [Fair Political Practices Commission](#)
- [California Secretary of State](#)
- [Cal-Access](#)
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Contact of Public Official Details

Date	10/18/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Technology
Issue	FIBER OPTIC NETWORK
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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Contact of Public Official Details

Date	11/14/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Public Utilities
Issue	INTERNET SERVICE PROVIDER CHOICE LEGISLATION AMENDMENT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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Contact of Public Official Details

Date	11/15/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Public Utilities
Issue	INTERNET SERVICE PROVIDER CHOICE LEGISLATION AMENDMENT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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Contact of Public Official Details

Date	11/29/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Public Utilities
Issue	INTERNET SERVICE PROVIDER CHOICE LEGISLATION AMENDMENT
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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Contact of Public Official Details

Date	11/30/2016
Lobbyist	Hayward, A. Boe
Firm or Employer	Lighthouse Public Affairs
Client	AT&T
Client Address	525 MARKET STREET, ROOM 1946 SAN FRANCISCO, CA, 94105
Client Phone	(415) 778-1250
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Public Utilities
Issue	INTERNET SERVICE PROVIDER CHOICE LEGISLATION AMENDMENT
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Outcome Sought	SUPPORT
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Contact of Public Official Details

Date	02/10/2016
Lobbyist	Hayward, Boe
Firm or Employer	GOODYEAR PETERSON HAYWARD & ASSOCIATES, LLC
Client	FACEBOOK
Client Address	1 HACKER WAY MENLO PARK, CA, 94025
Client Phone	(650) 543-4800
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Transportation
Issue	PRIVATE EMPLOYEE SHUTTLE
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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Contact of Public Official Details

Date	04/08/2015
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	SHORT-TERM RENTAL LEGISLATION
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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Contact of Public Official Details

Date	02/23/2015
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	AFFORDABLE HOUSING AND EVICTIONS
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Contact of Public Official Details

Date	04/20/2015
Lobbyist	Jung, Mary
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	415-431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	SHORT TERM RENTAL LEGISLATION
File Number	
Outcome Sought	MONITOR
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Contact of Public Official Details

Date	05/20/2015
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Economic Development
Issue	NEIGHBORHOOD STABILIZATION PROGRAM
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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Contact of Public Official Details

Date	05/26/2015
Lobbyist	Jung, Mary
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	415-431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	AFFORDABLE HOUSING AND EVICTIONS
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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Date	05/26/2015
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	AFFORDABLE HOUSING AND EVICTIONS
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Contact of Public Official Details

Date	01/12/2016
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	IN-LAW/SECONDARY UNIT LEGISLATION
File Number	
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Date	01/12/2016
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	INCLUSIONARY ZONING BALLOT MEASURE
File Number	
Outcome Sought	MONITOR
Expert in Attendance (Area of Expertise)	

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Date	01/12/2016
Lobbyist	Cheng, Jay
Firm or Employer	SAN FRANCISCO ASSOCIATION OF REALTORS
Client	SAN FRANCISCO ASSOCIATION OF REALTORS
Client Address	301 GROVE STREET SAN FRANCISCO, CA, 94102
Client Phone	(415) 431-8500
Public Official	FARRELL, MARK
Department	Board of Supervisors
Subject Area	Housing/Property Tax
Issue	HOUSING DENSITY BONUS
File Number	
Outcome Sought	SUPPORT
Expert in Attendance (Area of Expertise)	

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- [Federal Election Commission](#)
- [Fair Political Practices Commission](#)
- [California Secretary of State](#)
- [Cal-Access](#)
- [City & County of San Francisco](#)
- [San Francisco Department of Elections](#)
- [San Francisco City Attorney's Office](#)
- [SF Open Data](#)

ATTACHMENT 5

Behested Payment Report

A Public Document

Behested Payment Report

1. Elected Officer or CPUC Member (Last name, First name) FARRELL, MARK Agency Name SAN FRANCISCO BOARD OF SUPERVISORS Agency Street Address [REDACTED] SAN FRANCISCO, CA 94102		FILED Date Stamp 17 JAN 30 AM 10:13 SAN FRANCISCO ETHICS COMMISSION	California 803 Form For Official Use Only
Designated Contact Person (Name and title, if different) Area Code/Phone Number [REDACTED]		<input type="checkbox"/> Amendment (See Part 5) Date of Original Filing: _____ (month, day, year)	
E-mail (Optional) [REDACTED]			

2. Payor Information (For additional payors, include an attachment with the names and addresses.)

SEE ATTACHED FOR PAYOR AND PAYMENT INFORMATION

Name _____

Address _____ City _____ State _____ Zip Code _____

3. Payee Information (For additional payees, include an attachment with the names and addresses.)

SAN FRANCISCO PARKS ALLIANCE

Name _____

[REDACTED] SAN FRANCISCO CA 94103

Address _____ City _____ State _____ Zip Code _____

4. Payment Information (Complete all information.)

Date of Payment: _____ (month, day, year) Amount of Payment: (In-Kind FMV) \$ _____ (Round to whole dollars.)

Payment Type: Monetary Donation or In-Kind Goods or Services (Provide description below.)

Brief Description of In-Kind Payment: _____

Purpose: (Check one and provide description below.) Legislative Governmental Charitable

Describe the legislative, governmental, charitable purpose, or event: 10/14/16 CHARITABLE FUNDRAISING
 EVENT FOR THE SHARED SCHOOLYARDS PROJECT OF THE SAN FRANCISCO PARKS ALLIANCE

5. Amendment Description or Comments

6. Verification

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on 1-13-17 _____ DATE

By _____ SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER

Supervisor Mark Farrell – Form 803 – Additional Payors

Date	Payor	Amount	Address
5/12/16	Facebook, Inc.	10,000	[REDACTED] Menlo Park, CA 94025
8/4/16	Ron Conway	10,000	[REDACTED] San Francisco, CA 94111
8/17/16	Fisher Family Fund	10,000	[REDACTED] San Francisco, CA 94111
8/23/16	Diane B. Wilsey	10,000	[REDACTED] San Francisco, CA 94115
8/25/16	Trumark Urban Partners (TUP Webster LLC)	5,000	[REDACTED] San Francisco, CA 94109
9/1/16	Fivepoint	5,000	[REDACTED] San Francisco, CA 94104
9/7/16	Dignity Health	5,000	[REDACTED] San Francisco, CA 94107
9/13/16	Kaiser Foundation Health Plan	5,000	[REDACTED] San Francisco, CA 94105
9/13/16	San Francisco Forty Niners	10,000	[REDACTED] Santa Clara, CA 95054
9/15/16	San Francisco Association of Realtors	10,000	[REDACTED] San Francisco, CA 94102
10/6/16	Anonymous	5,000	
10/14/16	BCSF, Inc.	5,000	[REDACTED] San Francisco, CA 94103
10/20/16	Golden State Warriors	5,000	[REDACTED] Oakland, CA 94607
11/2/16	Recology San Francisco	10,000	[REDACTED] San Francisco, CA 94134
11/8/16	Pacific Gas and Electric Company	25,000	[REDACTED] San Francisco, CA 94105
11/14/16	Lighthouse Public Affairs	5,000	[REDACTED] San Francisco, CA 94133

Behested Payment Report

A Public Document FILED

Behested Payment Report

1. Elected Officer or CPUC Member (Last name, First name) SUPERVISOR MARK FARRELL		Date Stamp 15 OCT -8 PM 2:13	California Form 803 For Official Use Only
Agency Name SAN FRANCISCO BOARD OF SUPERVISORS		SAN FRANCISCO ETHICS COMMISSION	
Agency Street Address ONE DR. CARLTON B. GOODLETT PL., RM. 244, SAN FRANCISCO, CA 94102			
Designated Contact Person (Name and title, if different)		<input type="checkbox"/> Amendment (See Part 5)	
Area Code/Phone Number (415) 554-7752	E-mail (Optional)	Date of Original Filing: _____ (month, day, year)	

2. Payor Information (For additional payors, include an attachment with the names and addresses.)

SEE ATTACHED FOR PAYOR AND PAYMENT INFORMATION

Name _____

Address _____ City _____ State _____ Zip Code _____

3. Payee Information (For additional payees, include an attachment with the names and addresses.)

SAN FRANCISCO PARKS ALLIANCE

Name _____

Address _____ City SAN FRANCISCO State CA Zip Code 94102

4. Payment Information (Complete all information.)

Date of Payment: _____ Amount of Payment: (In-Kind FMV) \$ _____
(month, day, year) (Round to whole dollars.)

Payment Type: Monetary Donation or In-Kind Goods or Services (Provide description below.)

Brief Description of In-Kind Payment: _____

Purpose: (Check one and provide description below.) Legislative Governmental Charitable

Describe the legislative, governmental, charitable purpose, or event: CHARITABLE FUNDRAISING FOR THE SHARED SCHOOLYARDS PROJECT OF THE SAN FRANCISCO PARKS ALLIANCE

5. Amendment Description or Comments

6. Verification

I certify, under penalty of perjury under the laws of the State of California, that to the best of my knowledge, the information contained herein is true and complete.

Executed on 10/6/15 DATE By _____ SIGNATURE OF ELECTED OFFICER OR CPUC MEMBER

FORM 803
PART 2 ATTACHMENT - ADDITIONAL PAYORS

<u>DATE</u>	<u>NAME</u>	<u>AMOUNT</u>	<u>ADDRESS</u>	<u>CITY</u>	<u>STATE</u>	<u>ZIP</u>
9/9/2015	TMG Partners	\$5,000.00		San Francisco	CA	94104
9/10/2015	San Francisco Association of Realtors	\$10,000.00		San Francisco	CA	94102
9/11/2015	Trumark Urban Partners (TUP Webster LLC)	\$5,000.00		San Francisco	CA	94105
9/14/2015	Recology	\$10,000.00		San Francisco	CA	94111
9/14/2015	San Francisco Police Officers Association	\$5,000.00		San Francisco	CA	94103
9/17/2015	Dignity Health	\$5,000.00		San Francisco	CA	94109
9/22/2015	CVS Pharmacy	\$5,000.00		Woonsocket	RI	2895
9/24/2015	Firefighters Local 798	\$5,000.00		San Francisco	CA	94158
9/24/2015	Tom & Linda Coates	\$25,000.00		San Francisco	CA	94111
9/26/2015	San Francisco Waterfront Partners	\$5,000.00		San Francisco	CA	94111
9/26/2015	Joseph & Edith Tobin	\$5,000.00		San Francisco	CA	94109
9/28/2015	ClearRock Capital	\$10,000.00		San Francisco	CA	94111
9/30/2015	Bay Club San Francisco	\$5,000.00		San Francisco	CA	94111
9/30/2015	Schwab Charitable	\$25,000.00		San Francisco	CA	94105
10/1/2015	Diane Wilsey	\$10,000.00		San Francisco	CA	94115
10/2/2015	BCSF, Inc.	\$5,000.00		San Francisco	CA	94103
10/2/2015	Donald Carmignani	\$10,000.00		San Francisco	CA	94123
10/2/2015	Grass Roots Non-Profit Collective	\$5,000.00		San Francisco	CA	94109
10/3/2015	Prado Group	\$12,500.00		San Francisco	CA	94108

ATTACHMENT 6



November 6, 2020

Patrick Ford
Senior Policy and Legislative Affairs Counsel
City and County of San Francisco Ethics Commission
25 Van Ness Ave.
Suite 220
San Francisco, CA 94102

Dear Mr. Ford:

Campaign Legal Center (“CLC”) respectfully submits these written comments to the City and County of San Francisco Ethics Commission (“Commission”) regarding the Commission’s consideration of changes to local rules governing behested payments.

CLC is a nonpartisan, nonprofit organization dedicated to protecting and strengthening American democracy across all levels of government. We work toward a more transparent, accountable and inclusive democracy that is responsive to the people. In furtherance of that goal, we work to ensure ethics laws across the country adequately protect the public’s confidence in the integrity of democratic institutions.

We support the Commission’s participation in efforts to reform San Francisco’s behested payment rules. As public confidence in the federal government hits historic lows¹ and San Francisco’s government responds to a corruption scandal,² it has never been more important to reaffirm the commitment to public service at the local level. Our comments are intended to inform the Commission and other stakeholders engaging in reform efforts

¹ Pew Research Center, *Public Trust in Government: 1958-2019* (Apr. 11, 2019), <https://www.pewresearch.org/politics/2019/04/11/public-trust-in-government-1958-2019/>.

² See Press Release, U.S. Dep’t of Justice, U.S. Att’y’s Off. N. Dist. Cal., New Charges, Plea Deals in San Francisco City Hall Corruption Investigation (Sept. 17, 2020), <https://www.justice.gov/usao-ndca/pr/new-charges-plea-deals-san-francisco-city-hall-corruption-investigation>.

how similarly situated jurisdictions govern behested payments through ethics laws and legal interpretations.

Examples of Regulations Restricting Public Officials from Soliciting Donations for Third-Party Organizations

Although jurisdictions outside of California do not commonly refer to “behested payments” in their ethics laws, many jurisdictions have restrictions on government officials soliciting gifts or donations from interested parties for third-party organizations. The scope of our survey is limited to a sample of large cities and states, as well as the federal government. As described in the table below, the jurisdictions generally regulate this activity in some combination of the following four ways:

- Reporting requirements
- Limits on donation amounts
- Ban on certain donors
- Ban on certain third-party recipients

Jurisdiction	Reporting Requirement	Limit on Amount Donated	Ban on Certain Donors	Ban on Certain Third-Party Recipients
San Francisco	X		X	
New York City	X		X	X
Austin			X	
Seattle			X	
Philadelphia		X	X	X
New York State		X	X	X
Maryland		X	X	X
Federal Executive Branch	X		X	
U.S. House of Representatives	X	X	X	X
U.S. Senate	X	X	X	X

Recommendations for Behested Payment Rules

CLC reviewed reform recommendations from the Controller of the City and County of San Francisco,³ as well as proposed changes offered by

³ City and Cnty. Of San Francisco Off. of the Controller, *Public Integrity Review, Preliminary Assessment: Gifts to Departments Through Non-City Organizations Lack Transparency and*

Commissioners Matt Haney and Aaron Peskin.⁴ We believe that all of the recommendations essentially fall into one of the four categories listed above, and are improvements to the current rules. We are offering recommendations below that go beyond the current proposals and should improve the overall effectiveness of any amendments.

Please note that our recommendations are intended to prevent the activities that occurred with the Public Works department⁵ and protect against bad actors exploiting any unintended loopholes in new rules.

Reporting Requirements: The reporting requirements for solicitations of behested payments, as well as any restrictions on behested payments, should apply to all city employees who solicit donations in their official capacities. Disclosing the solicitations of all employees avoids the loophole of allowing subordinates of covered officials (e.g., elected officials, department heads) to solicit donations in lieu of their bosses. Covering all city employees should not create an undue burden for administering this rule, as there should not be many circumstances where a city employee solicits donations in their official capacity from an interested party. More importantly, the broad application of the rule is needed to prevent easy circumvention.

Examples of jurisdictions in the survey with restrictions that cover less senior employees are New York City, Philadelphia, the Federal Executive Branch, the House of Representatives, and the Senate.

Limit on Amount Donated: Any solicited donation should be limited to a dollar amount to avoid the appearance of corruption. Without a limit on the amount of the donation, any permitted solicitation will diminish the public's trust by raising the perception of pay-to-play.

For example, the Haney and Peskin proposal bans solicitations from a company that is seeking a contract. However, the potential loophole is that solicitations are permitted before a request for proposals is issued, i.e., before a company is technically seeking a contract. The proposal would require disclosure of the solicitation if the company began seeking a contract a few months later, but disclosure alone does not change the fact that the donations may diminish the public's trust, especially when one of those donors may ultimately receive the contract (i.e., the intent of the rule is not to

Create "Pay-to-Play" Risk (Sept. 24, 2020), <https://sfcontroller.org/sites/default/files/Documents/Auditing/Public%20Integrity%20Review%20-%20Non-City%20Organizations%2009.24.20.pdf>.

⁴ Memorandum from Pat Ford, Senior Policy and Legislative Affairs Counsel to Members of the City and Cnty, of San Francisco Ethics Comm'n, <https://sfethics.org/wp-content/uploads/2s020/10/2020.10.09-Agenda-Item-6-Policy-Report-FINAL.pdf>.

⁵ See Off. of the Controller, *supra* note 3.

disqualify donors from receiving contracts, but the rule must address the inevitable pay-to-play perception of a large donor receiving the contract).

The perception of a pay-to-play problem is exacerbated when the law permits officials to solicit particularly large donations for third parties, when only wealthy interests are able to pay the price requested by the official. In other words, disclosure is a first step to exposing the problem, but it will not remove the appearance of corruption if there is no limit on how much a prospective donor is permitted to give at an official's request.

Solicited donations in lieu of honoraria from members of the U.S. Congress are limited to \$2,000 per occasion. Other jurisdictions surveyed, including New York State and Philadelphia, prohibit officials from soliciting payments to third parties that the official could not accept themselves under the gift rule limitations, presumably making the behested payment threshold coextensive with the gift rule dollar limit (\$15 in New York State and \$99 in Philadelphia).

Ban Certain Donors: The rule should ban donors who are restricted under the state and local gift laws. Many of the jurisdictions in the survey that restrict behested payments do so in their gift laws, presumably to assuage concerns that officials will use behested payments to circumvent gift restrictions. The current behested payment rules in San Francisco essentially do just that: create an exception to the gift law through behested payments. This becomes an exception that swallows the rule when a lobbyist or other restricted source can provide an official with unlimited donations to a third-party of the official's choice. As a result, the behested payment rules should align with the state and local gift rules and apply to donations from lobbyists and other restricted sources.

Examples of jurisdictions in the survey that ban officials from soliciting donations from registered lobbyists are: New York State, Philadelphia, Maryland, the Federal Executive Branch, the House of Representatives, and the Senate.

Ban Certain Third Parties Recipients: The third-party recipients of the donations should not include organizations from which the individual or his or her immediate family (parent, sibling, spouse, child, or dependent relative) derives any financial benefit. A direct conflict of interest exists if a city official or employee solicits donations for an organization in which they or a relative have a financial interest.

Examples of jurisdictions in the survey that ban donations to third-parties affiliated with the official are: New York City, New York State, Maryland, Federal Executive Branch, the House of Representatives, and the Senate.

Conclusion

CLC respectfully urges the Commission to consider and, where practicable, implement these recommendations for reforming San Francisco's behested payments rules. We appreciate the opportunity to participate in this important process, and CLC welcomes any questions that the Executive Director, Commissioners, or any other stakeholder may have regarding our comments.

Sincerely,

_____/s/_____

Kedric L. Payne
General Counsel and Senior Director,
Ethics

_____/s/_____

Delaney N. Marsco
Legal Counsel, Ethics

ATTACHMENT 7

1 [Campaign and Governmental Conduct Code - Behested Payments]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to expand the**
4 **definition of interested party, to prohibit appointed department heads from soliciting**
5 **certain behested payments, and to require department heads to report solicitation of**
6 **certain behested payments.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in *strikethrough italics Times New Roman font*.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

11

12 Be it ordained by the People of the City and County of San Francisco:

13

14 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
15 revising Sections 3.600 and 3.610, and adding Section 3.605, to read as follows:

16 **SEC. 3.600. DEFINITIONS.**

17 Whenever in this Chapter 6 the following words or phrases are used, they shall have
18 the following meanings:

19 "Agent" shall *mean any person who represents a party in connection with a proceeding*
20 *involving a license, permit or other entitlement for use. be defined as set forth in Title 2, Section*
21 *18438.3 of California Code of Regulations, as amended from time to time.*

22 "*Appointed department head*" shall *mean any department head who is required to file a*
23 *Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code, except for the*
24 *Assessor-Recorder, City Attorney, District Attorney, Mayor, Public Defender, Sheriff, and Treasurer.*

25 * * * *

1 “Commissioner” shall mean any member of a board or commission who is required to file a
2 Statement of Economic Interests as set forth in Section 3.1-103(a)(1) of this Code.

3 * * * *

4 “Elected department head” shall mean Assessor-Recorder, City Attorney, District Attorney,
5 Mayor, Public Defender, Sheriff, or Treasurer.

6 * * * *

7 “Interested party” shall mean either:

8 (a) any party, participant or agent of a party or participant involved in a
9 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
10 use, ~~before an officer or any board or commission (including the Board of Supervisors) on which the~~
11 ~~officer sits; or~~

12 (b) any person contracting with or seeking to contract with the officer’s department.

13 “License, permit, or other entitlement for use” shall mean professional, trade or land use
14 licenses, permits, or other entitlements to use property or engage in business, including professional
15 license revocations, conditional use permits, rezoning of property parcels, zoning variances, tentative
16 subdivision and parcel maps, cable television franchises, building and development permits, private
17 development plans, and contracts (other than labor or personal employment contracts and
18 competitively bid contracts where the City is required to select the highest or lowest qualified bidder).
19 be defined as set forth in California Government Code Section 84308, as amended from time to time.

20 “Officer” shall mean any commissioner, appointed department head or elected department
21 head. ~~the Mayor, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, Public~~
22 ~~Defender, a Member of the Board of Supervisors, or any member of a board or commission who is~~
23 ~~required to file a Statement of Economic Interests, including all persons holding positions listed in~~
24 ~~Section 3.1-103(a)(1) of this Code.~~

25 “Payment” shall mean a monetary payment or the delivery of goods or services.

1 “Participant” shall means any person who is not a party but who actively supports or opposes
2 (by lobbying in person, testifying in person, or otherwise acting to influence) a particular decision in a
3 proceeding involving a license, permit, or other entitlement for use and who has a financial interest in
4 the decision. ~~be defined as set forth in California Government Code Section 84308 and Title 2, Section~~
5 ~~18438.4 of California Code of Regulations, as amended from time to time.~~

6 “Party” shall mean any person who files an application for, or is the subject of, a proceeding
7 involving a license, permit, or other entitlement for use. ~~be defined as set forth in California~~
8 ~~Government Code Section 84308, as amended from time to time.~~

9 “Payment” shall mean a monetary payment or the delivery of goods or services.

10 “Pending contract” shall mean a contract or prospective contract from the submission of a
11 proposal until either (1) the termination of negotiations for such contract; or (2) the term of the
12 contract has expired.

13 “Pending proceeding” shall mean a proceeding regarding administrative enforcement, a
14 license, a permit, or other entitlement for use, while it is before (1) an officer or any board or
15 commission (including the Board of Supervisors) on which the officer sits, if the officer is a
16 commissioner or (2) before the officer’s department, if the officer is an appointed department head or
17 elected department head.

18 “Person” shall be defined as set forth in Section 1.104 of this Code.

19 * * * *

20
21 **SEC. 3.605. PROHIBITING APPOINTED DEPARTMENT HEADS FROM SOLICITING**
22 **BEHESTED PAYMENTS.**

23 **(a) PROHIBITION.**

24 (1) Appointed department heads shall not solicit any behested payment from any party,
25 participant or agent of a party or participant involved in a pending proceeding:

1 (A) during the pending proceeding; and
2 (B) for six months following the date on which a final decision is rendered in the
3 pending proceeding.

4 (2) Appointed department heads shall not solicit any behested payment from any person
5 with a pending contract before their department.

6 **(b) EXCEPTIONS.**

7 (1) Elected department heads. This Section 3.605 shall not apply elected department
8 heads.

9 (2) Public appeals. This Section 3.605 shall not apply to public appeals made by
10 appointed department heads.

11 (3) City department. This Section 3.605 shall not apply to requests or solicitations for
12 behested payments made directly to a City department.

13
14 **SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS.**

15 **(a) FILING REQUIREMENT - COMMISSIONERS AND ELECTED DEPARTMENT**
16 **HEADS.**

17 (1) Proceeding regarding administrative enforcement, a license, a permit, or other
18 entitlement for use. ~~If an officer~~ a commissioner or elected department head directly or indirectly
19 requests or solicits any behested payment(s) from ~~an interested party~~ any party, participant or
20 agent of a party or participant involved in a pending proceeding, the ~~officer~~ commissioner or elected
21 department head shall file ~~the a~~ behested payment report ~~described in subsection (b) with the Ethics~~
22 ~~Commission~~ in the following circumstances:

23 (+) (A) if the interested party makes any behested payment(s) totaling
24 \$1,000 or more during the ~~pendency of the matter involving the interested party~~ pending proceeding,
25 the ~~officer~~ commissioner or elected department head shall file a behested payment report ~~within 30~~

1 *days of the date on which the behested payment was made, or if there has been a series of behested*
2 *payments, within 30 days of the date on which the behested payment(s) total \$1,000 or more;*

3 *(2) (B) if the interested party makes any behested payment(s) totaling*
4 *\$1,000 or more during the six months following the date on which a final decision is rendered*
5 *in the ~~matter involving the interested party pending proceeding~~, the ~~officer~~ commissioner or elected*
6 *department head shall file a behested payment report ~~within 30 days of the date on which the~~*
7 *~~behested payment was made, or if there has been a series of behested payments, within 30 days of the~~*
8 *~~date on which the behested payment(s) total \$1,000 or more;~~ and*

9 *(3) (C) if the interested party made any behested payment(s) totaling*
10 *\$1,000 or more in the 12 months prior to the commencement of a ~~matter involving the interested~~*
11 *~~party pending proceeding~~, the ~~officer~~ commissioner or elected department head shall file a behested*
12 *payment report within 30 days of the date the ~~officer~~ commissioner or elected department head*
13 *knew or should have known that the source of the behested payment(s) became an interested*
14 *party.*

15 *(2) Person contracting with or seeking to contract with department. If a commissioner*
16 *or elected department head directly or indirectly requests or solicits any behested payment(s) totaling*
17 *\$1,000 or more from any person who has a pending contract, the commissioner or elected department*
18 *head shall file a behested payment report.*

19 **(b) FILING REQUIREMENT – APPOINTED DEPARTMENT HEADS.**

20 *(1) Proceeding regarding administrative enforcement, a license, a permit, or other*
21 *entitlement for use.*

22 *(A) If an appointed department head directly or indirectly requests or solicits*
23 *any behested payment(s) totaling \$1,000 or more from any party, participant or agent of a party or*
24 *participant involved in a pending proceeding in the 12 months prior to the commencement of the*
25 *proceeding, the appointed department head shall file a behested payment report within 30 days of the*

1 date the appointed department head knew or should have known that the source of the behested
2 payment(s) became an interested party.

3 (B) If an appointed department head directly or indirectly requests or solicits
4 any behested payment(s) from any party, participant or agent of a party or participant involved in a
5 pending proceeding, and if the direct recipient of the behested payment is a City department, the
6 appointed department head shall file a behested payment report under the following circumstances:

7 (i) if the interested party makes any behested payment(s) totaling \$1,000
8 or more during the pending proceeding; and

9 (ii) if the interested party makes any behested payment(s) totaling \$1,000
10 or more during the six months following the date on which a final decision is rendered in the pending
11 proceeding.

12 (2) **Person contracting with or seeking to contract with department.** If an appointed
13 department head directly or indirectly requests or solicits any behested payment(s) totaling \$1,000 or
14 more from any person who has a pending contract with the department head's department, and if the
15 direct recipient of the behested payment is a City department, the department head shall file a behested
16 payment report.

17 ~~(b)~~ (c) **BEHESTED PAYMENT REPORT.** The behested payment report shall include
18 the following:

- 19 (1) name of payor;
20 (2) address of payor;
21 (3) amount of the payment(s);
22 (4) date(s) the payment(s) were made,
23 (5) the name~~(s)~~ and address~~(es)~~ of the payee(s),
24 (6) a brief description of the goods or services provided or purchased, if any,
25 and a description of the specific purpose or event for which the payment(s) were made;

1 (7) if the officer or the officer's relative, staff member, or paid campaign staff, is
2 an officer, executive, member of the board of directors, staff member or authorized agent for
3 the recipient of the behested payment(s), such individual's name, relation to the officer, and
4 position held with the payee;

5 (8) if the payee has created or distributed 200 or more substantially similar
6 communications featuring the officer within the six months prior to the deadline for filing the
7 behested payment report, a brief description of such communication(s), the purpose of the
8 communication(s), the number of communication(s) distributed, and a copy of the
9 communication(s); and

10 (9) if in the six months following the deadline for filing the behested payment
11 report, the payee has created or distributed 200 or more substantially similar communications
12 featuring the officer, the officer shall file an amended payment report that discloses a brief
13 description of such communication(s), the purpose of the communication(s), the number of
14 communication(s) distributed, and a copy of the communication(s).

15 *(d) FILING A BEHESTED PAYMENT REPORT. Unless otherwise provided under this*
16 *Section 3.610, when an officer is required to file a behested payment report, the officer shall file the*
17 *behested payment report described in subsection (c) with the Ethics Commission within 30 days of the*
18 *date on which the behested payment was made, or if there has been a series of behested payments,*
19 *within 30 days of the date on which the behested payments total \$1,000 or more.*

20 ~~(e)~~ (e) **AMENDMENTS.** If any of the information previously disclosed on a behested
21 payment report changes during the pendency of the matter involving the interested party, or
22 within six months of the final decision in such matter, the officer shall file an amended
23 behested payment report.

24 ~~(f)~~ (f) **PUBLIC APPEALS.** Notwithstanding subsections (a) and (b), no officer shall be
25 required to report any behested payment that is made solely in response to a public appeal.

1 ~~(e)~~ (g) **NOTICE.** If an officer solicits or otherwise requests, in any manner other than a
2 public appeal, that any person make a behested payment, the official or his agent must notify
3 that person that if the person makes any behested payment in response to the solicitation or
4 request, the person may be subject to the disclosure and notice requirements in Section
5 3.620.

6 ~~(f)~~ (h) **WEBSITE POSTING.** The Ethics Commission shall ~~make available through its~~
7 ~~website~~ all behested payment reports it receives from officers on its website.

8
9 Section 2. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor’s veto of the ordinance.

13
14 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the “Note” that appears under
19 the official title of the ordinance.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: /s/ Andrew Shen
24 ANDREW SHEN
25 Deputy City Attorney

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BOARD of SUPERVISORS



City Hall
1 Dr. Carlton B. Goodlett Place, Room 244
San Francisco 94102-4689
Tel. No. 554-5184
Fax No. 554-5163
TDD/TTY No. 554-5227

MEMORANDUM

TO: All City Department Heads via Sophia Kittler, Mayor's Office
John Arntz, Director, Department of Elections

FROM: Victor Young, Assistant Clerk *Victor Young*
Rules Committee

DATE: October 9, 2020

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Rules Committee received the following proposed legislation:

File No. 201132

Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of interested party, to prohibit appointed department heads from soliciting certain behested payments, and to require department heads to report solicitation of certain behested payments.

If you have comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102 or by email at: victor.young@sfgov.org.

c: Eddie McCaffrey, Mayor's Office
Rebecca Peacock, Mayor's Office
Andres Power, Mayor's Office



City and County of San Francisco

Master Report

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

File Number: 201132 **File Type:** Ordinance **Status:** 30 Day Rule

Enacted: _____ **Effective:** _____

Version: 1 **In Control:** Rules Committee

File Name: Campaign and Governmental Conduct Code - Behested Payments **Date Introduced:** 09/29/2020

Requester: _____ **Cost:** _____ **Final Action:** _____

Comment: _____ **Title:** Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of interested party, to prohibit appointed department heads from soliciting certain behested payments, and to require department heads to report solicitation of certain behested payments.

Sponsors: Haney; Peskin

History of Legislative File 201132

Ver	Acting Body	Date	Action	Sent To	Due Date	Result
1	President	09/29/2020	ASSIGNED UNDER 30 DAY RULE	Rules Committee	10/29/2020	

1 [Campaign and Governmental Conduct Code - Behested Payments]

2

3 **Ordinance amending the Campaign and Governmental Conduct Code to expand the**
4 **definition of interested party, to prohibit appointed department heads from soliciting**
5 **certain behested payments, and to require department heads to report solicitation of**
6 **certain behested payments.**

7 NOTE: **Unchanged Code text and uncodified text** are in plain Arial font.
8 **Additions to Codes** are in *single-underline italics Times New Roman font*.
9 **Deletions to Codes** are in ~~*strikethrough italics Times New Roman font*~~.
10 **Board amendment additions** are in double-underlined Arial font.
11 **Board amendment deletions** are in ~~strikethrough Arial font~~.
12 **Asterisks (* * * *)** indicate the omission of unchanged Code
13 subsections or parts of tables.

11

12 Be it ordained by the People of the City and County of San Francisco:

13

14 Section 1. The Campaign and Governmental Conduct Code is hereby amended by
15 revising Sections 3.600 and 3.610, and adding Section 3.605, to read as follows:

16 **SEC. 3.600. DEFINITIONS.**

17 Whenever in this Chapter 6 the following words or phrases are used, they shall have
18 the following meanings:

19 "Agent" shall mean any person who represents a party in connection with a proceeding
20 involving a license, permit or other entitlement for use. be defined as set forth in Title 2, Section
21 18438.3 of California Code of Regulations, as amended from time to time.

22 "Appointed department head" shall mean any department head who is required to file a
23 Statement of Economic Interests as set forth in Section 3.1-103(b)(1) of this Code, except for the
24 Assessor-Recorder, City Attorney, District Attorney, Mayor, Public Defender, Sheriff, and Treasurer.

25 * * * *

1 “Commissioner” shall mean any member of a board or commission who is required to file a
2 Statement of Economic Interests as set forth in Section 3.1-103(a)(1) of this Code.

3 * * * *

4 “Elected department head” shall mean Assessor-Recorder, City Attorney, District Attorney,
5 Mayor, Public Defender, Sheriff, or Treasurer.

6 * * * *

7 “Interested party” shall mean either:

8 (a) any party, participant or agent of a party or participant involved in a
9 proceeding regarding administrative enforcement, a license, a permit, or other entitlement for
10 use, ~~before an officer or any board or commission (including the Board of Supervisors) on which the~~
11 ~~officer sits; or~~

12 (b) any person contracting with or seeking to contract with the officer’s department.

13 “License, permit, or other entitlement for use” shall mean professional, trade or land use
14 licenses, permits, or other entitlements to use property or engage in business, including professional
15 license revocations, conditional use permits, rezoning of property parcels, zoning variances, tentative
16 subdivision and parcel maps, cable television franchises, building and development permits, private
17 development plans, and contracts (other than labor or personal employment contracts and
18 competitively bid contracts where the City is required to select the highest or lowest qualified bidder).
19 be defined as set forth in California Government Code Section 84308, as amended from time to time.

20 “Officer” shall mean any commissioner, appointed department head or elected department
21 head. ~~the Mayor, City Attorney, District Attorney, Treasurer, Sheriff, Assessor-Recorder, Public~~
22 ~~Defender, a Member of the Board of Supervisors, or any member of a board or commission who is~~
23 ~~required to file a Statement of Economic Interests, including all persons holding positions listed in~~
24 ~~Section 3.1-103(a)(1) of this Code.~~

25 “Payment” shall mean a monetary payment or the delivery of goods or services.

1 “Participant” shall means any person who is not a party but who actively supports or opposes
2 (by lobbying in person, testifying in person, or otherwise acting to influence) a particular decision in a
3 proceeding involving a license, permit, or other entitlement for use and who has a financial interest in
4 the decision. ~~be defined as set forth in California Government Code Section 84308 and Title 2, Section~~
5 ~~18438.4 of California Code of Regulations, as amended from time to time.~~

6 “Party” shall mean any person who files an application for, or is the subject of, a proceeding
7 involving a license, permit, or other entitlement for use. ~~be defined as set forth in California~~
8 ~~Government Code Section 84308, as amended from time to time.~~

9 “Payment” shall mean a monetary payment or the delivery of goods or services.

10 “Pending contract” shall mean a contract or prospective contract from the submission of a
11 proposal until either (1) the termination of negotiations for such contract; or (2) the term of the
12 contract has expired.

13 “Pending proceeding” shall mean a proceeding regarding administrative enforcement, a
14 license, a permit, or other entitlement for use, while it is before (1) an officer or any board or
15 commission (including the Board of Supervisors) on which the officer sits, if the officer is a
16 commissioner or (2) before the officer’s department, if the officer is an appointed department head or
17 elected department head.

18 “Person” shall be defined as set forth in Section 1.104 of this Code.

19 * * * *

20
21 **SEC. 3.605. PROHIBITING APPOINTED DEPARTMENT HEADS FROM SOLICITING**
22 **BEHESTED PAYMENTS.**

23 **(a) PROHIBITION.**

24 (1) Appointed department heads shall not solicit any behested payment from any party,
25 participant or agent of a party or participant involved in a pending proceeding:

1 (A) during the pending proceeding; and
2 (B) for six months following the date on which a final decision is rendered in the
3 pending proceeding.

4 (2) Appointed department heads shall not solicit any behested payment from any person
5 with a pending contract before their department.

6 **(b) EXCEPTIONS.**

7 (1) Elected department heads. This Section 3.605 shall not apply elected department
8 heads.

9 (2) Public appeals. This Section 3.605 shall not apply to public appeals made by
10 appointed department heads.

11 (3) City department. This Section 3.605 shall not apply to requests or solicitations for
12 behested payments made directly to a City department.

13
14 **SEC. 3.610. REQUIRED FILING OF BEHESTED PAYMENT REPORTS.**

15 **(a) FILING REQUIREMENT - COMMISSIONERS AND ELECTED DEPARTMENT**
16 **HEADS.**

17 (1) Proceeding regarding administrative enforcement, a license, a permit, or other
18 entitlement for use. ~~If an officer~~ a commissioner or elected department head directly or indirectly
19 requests or solicits any behested payment(s) from ~~an interested party~~ any party, participant or
20 agent of a party or participant involved in a pending proceeding, the ~~officer~~ commissioner or elected
21 department head shall file ~~the~~ a behested payment report ~~described in subsection (b) with the Ethics~~
22 Commission in the following circumstances:

23 (~~H~~) (A) if the interested party makes any behested payment(s) totaling
24 \$1,000 or more during the ~~pendency of the matter involving the interested party~~ pending proceeding,
25 the ~~officer~~ commissioner or elected department head shall file a behested payment report ~~within 30~~

1 *days of the date on which the behested payment was made, or if there has been a series of behested*
2 *payments, within 30 days of the date on which the behested payment(s) total \$1,000 or more;*

3 ~~(2)~~ (B) if the interested party makes any behested payment(s) totaling
4 \$1,000 or more during the six months following the date on which a final decision is rendered
5 in the ~~matter involving the interested party pending proceeding~~, the ~~officer~~ commissioner or elected
6 department head shall file a behested payment report ~~within 30 days of the date on which the~~
7 ~~behested payment was made, or if there has been a series of behested payments, within 30 days of the~~
8 ~~date on which the behested payment(s) total \$1,000 or more;~~ and

9 ~~(3)~~ (C) if the interested party made any behested payment(s) totaling
10 \$1,000 or more in the 12 months prior to the commencement of a ~~matter involving the interested~~
11 ~~party pending proceeding~~, the ~~officer~~ commissioner or elected department head shall file a behested
12 payment report within 30 days of the date the ~~officer~~ commissioner or elected department head
13 knew or should have known that the source of the behested payment(s) became an interested
14 party.

15 (2) Person contracting with or seeking to contract with department. If a commissioner
16 or elected department head directly or indirectly requests or solicits any behested payment(s) totaling
17 \$1,000 or more from any person who has a pending contract, the commissioner or elected department
18 head shall file a behested payment report.

19 (b) FILING REQUIREMENT – APPOINTED DEPARTMENT HEADS.

20 (1) Proceeding regarding administrative enforcement, a license, a permit, or other
21 entitlement for use.

22 (A) If an appointed department head directly or indirectly requests or solicits
23 any behested payment(s) totaling \$1,000 or more from any party, participant or agent of a party or
24 participant involved in a pending proceeding in the 12 months prior to the commencement of the
25 proceeding, the appointed department head shall file a behested payment report within 30 days of the

1 date the appointed department head knew or should have known that the source of the behested
2 payment(s) became an interested party.

3 (B) If an appointed department head directly or indirectly requests or solicits
4 any behested payment(s) from any party, participant or agent of a party or participant involved in a
5 pending proceeding, and if the direct recipient of the behested payment is a City department, the
6 appointed department head shall file a behested payment report under the following circumstances:

7 (i) if the interested party makes any behested payment(s) totaling \$1,000
8 or more during the pending proceeding; and

9 (ii) if the interested party makes any behested payment(s) totaling \$1,000
10 or more during the six months following the date on which a final decision is rendered in the pending
11 proceeding.

12 (2) **Person contracting with or seeking to contract with department.** If an appointed
13 department head directly or indirectly requests or solicits any behested payment(s) totaling \$1,000 or
14 more from any person who has a pending contract with the department head's department, and if the
15 direct recipient of the behested payment is a City department, the department head shall file a behested
16 payment report.

17 ~~(b)~~ (c) **BEHESTED PAYMENT REPORT.** The behested payment report shall include
18 the following:

- 19 (1) name of payor;
20 (2) address of payor;
21 (3) amount of the payment(s);
22 (4) date(s) the payment(s) were made,
23 (5) the name~~(s)~~ and address~~(es)~~ of the payee(s),
24 (6) a brief description of the goods or services provided or purchased, if any,
25 and a description of the specific purpose or event for which the payment(s) were made;

1 (7) if the officer or the officer's relative, staff member, or paid campaign staff, is
2 an officer, executive, member of the board of directors, staff member or authorized agent for
3 the recipient of the behested payment(s), such individual's name, relation to the officer, and
4 position held with the payee;

5 (8) if the payee has created or distributed 200 or more substantially similar
6 communications featuring the officer within the six months prior to the deadline for filing the
7 behested payment report, a brief description of such communication(s), the purpose of the
8 communication(s), the number of communication(s) distributed, and a copy of the
9 communication(s); and

10 (9) if in the six months following the deadline for filing the behested payment
11 report, the payee has created or distributed 200 or more substantially similar communications
12 featuring the officer, the officer shall file an amended payment report that discloses a brief
13 description of such communication(s), the purpose of the communication(s), the number of
14 communication(s) distributed, and a copy of the communication(s).

15 (d) **FILING A BEHESTED PAYMENT REPORT.** Unless otherwise provided under this
16 Section 3.610, when an officer is required to file a behested payment report, the officer shall file the
17 behested payment report described in subsection (c) with the Ethics Commission within 30 days of the
18 date on which the behested payment was made, or if there has been a series of behested payments,
19 within 30 days of the date on which the behested payments total \$1,000 or more.

20 ~~(e)~~ (e) **AMENDMENTS.** If any of the information previously disclosed on a behested
21 payment report changes during the pendency of the matter involving the interested party, or
22 within six months of the final decision in such matter, the officer shall file an amended
23 behested payment report.

24 ~~(f)~~ (f) **PUBLIC APPEALS.** Notwithstanding subsections (a) and (b), no officer shall be
25 required to report any behested payment that is made solely in response to a public appeal.

1 ~~(e)~~ (g) **NOTICE.** If an officer solicits or otherwise requests, in any manner other than a
2 public appeal, that any person make a behested payment, the official or his agent must notify
3 that person that if the person makes any behested payment in response to the solicitation or
4 request, the person may be subject to the disclosure and notice requirements in Section
5 3.620.

6 ~~(f)~~ (h) **WEBSITE POSTING.** The Ethics Commission shall ~~make available through its~~
7 ~~website~~ all behested payment reports it receives from officers on its website.

8
9 Section 2. Effective Date. This ordinance shall become effective 30 days after
10 enactment. Enactment occurs when the Mayor signs the ordinance, the Mayor returns the
11 ordinance unsigned or does not sign the ordinance within ten days of receiving it, or the Board
12 of Supervisors overrides the Mayor’s veto of the ordinance.

13
14 Section 3. Scope of Ordinance. In enacting this ordinance, the Board of Supervisors
15 intends to amend only those words, phrases, paragraphs, subsections, sections, articles,
16 numbers, punctuation marks, charts, diagrams, or any other constituent parts of the Municipal
17 Code that are explicitly shown in this ordinance as additions, deletions, Board amendment
18 additions, and Board amendment deletions in accordance with the “Note” that appears under
19 the official title of the ordinance.

20
21 APPROVED AS TO FORM:
22 DENNIS J. HERRERA, City Attorney

23 By: /s/ Andrew Shen
24 ANDREW SHEN
25 Deputy City Attorney

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LEGISLATIVE DIGEST

[Campaign and Governmental Conduct Code - Behested Payments]

Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of interested party, to prohibit appointed department heads from soliciting certain behested payments, and to require department heads to report solicitation of certain behested payments.

Existing Law

State law requires elected officials – but not City commissioners or department heads – to file “behested payment” reports when they solicit contributions of \$5,000 from a single source in a calendar year for legislative, governmental, or charitable purposes. Such reports must be filed with the Ethics Commission. See Cal. Gov. Code §§ 82004.5, 84224.

Local law additionally requires City commissioners and elected officials – but not appointed City department heads – to file behested payment reports for solicitations of charitable contributions totaling \$1,000 or more from “interested parties” with certain matters before their commissions. These matters include proceedings regarding administrative enforcement, a license, a permit, or other entitlement for use before their boards and commissions. Commissioners are required to file these reports when they solicit a behested payment from:

- a party, participant or agent of a party or participant in a proceeding while the matter is pending;
- a party, participant or agent of a party or participant in a proceeding during the six months following the date a final decision is rendered in the matter; and
- a party, participant or agent of a party or participant in the 12 months prior to the commencement of a proceeding, after the commissioner learns or should have learned that the source of the contribution became involved in a proceeding.

S.F. Campaign & Gov’tal Conduct Code § 3.610.

Local law also requires the donors and recipients of such contributions to file additional reports. These reports must also be filed with the Ethics Commission. S.F. Campaign & Gov’tal Conduct Code §§ 3.620, 3.630.

Amendments to Current Law

The proposed legislation would expand “interested parties” to include contractors and prospective contractors before an officer’s department or commission.

The proposed legislation would prohibit appointed department heads from soliciting behested payments from interested parties while their matters are pending before their department. The proposal would also prohibit such solicitations for six months after those matters are concluded.

This prohibition on fundraising by appointed department heads would not apply to:

- elected department heads (the Assessor-Recorder, City Attorney, District Attorney, Mayor, Public Defender, Sheriff, and Treasurer);
- solicitations for behested payments that are made directly to City departments, or
- solicitations made through “public appeals.”

The proposed legislation would also require appointed department heads to report behested payments from interested parties, if the department head sought a behested payment in the 12 months prior to the commencement of a proceeding, after the department learns or should have learned that the source of the contribution became involved in a proceeding before their department. Likewise, appointed department heads would be required to report behested payments from interested parties if the direct recipient of a behested payment is a City department.

Background Information

The behested payment reports required by existing law are available on the Ethics Commission’s website:

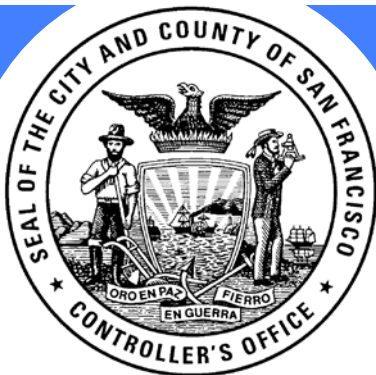
<https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer>

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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)*

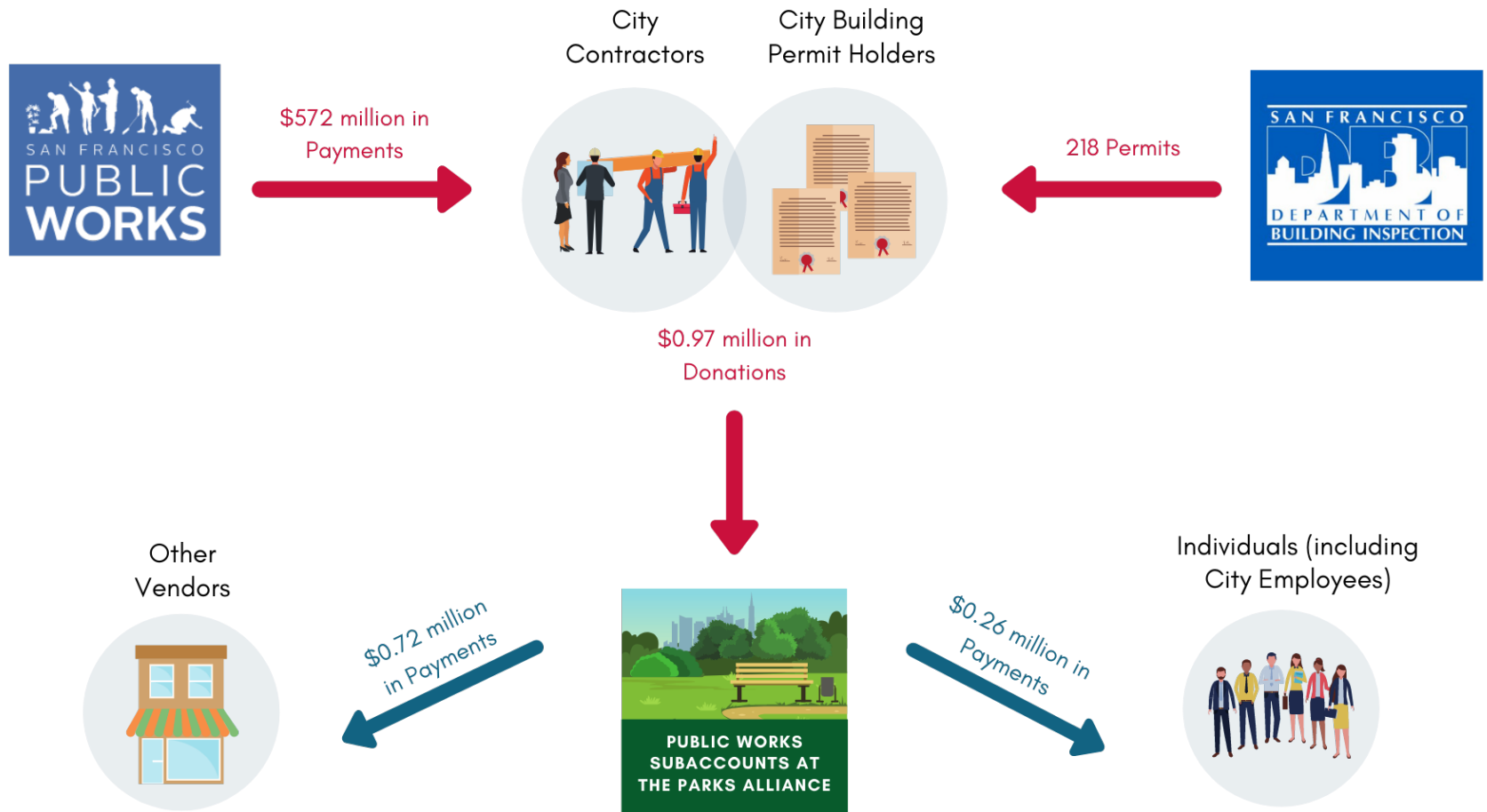
Preliminary Findings

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 1829 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

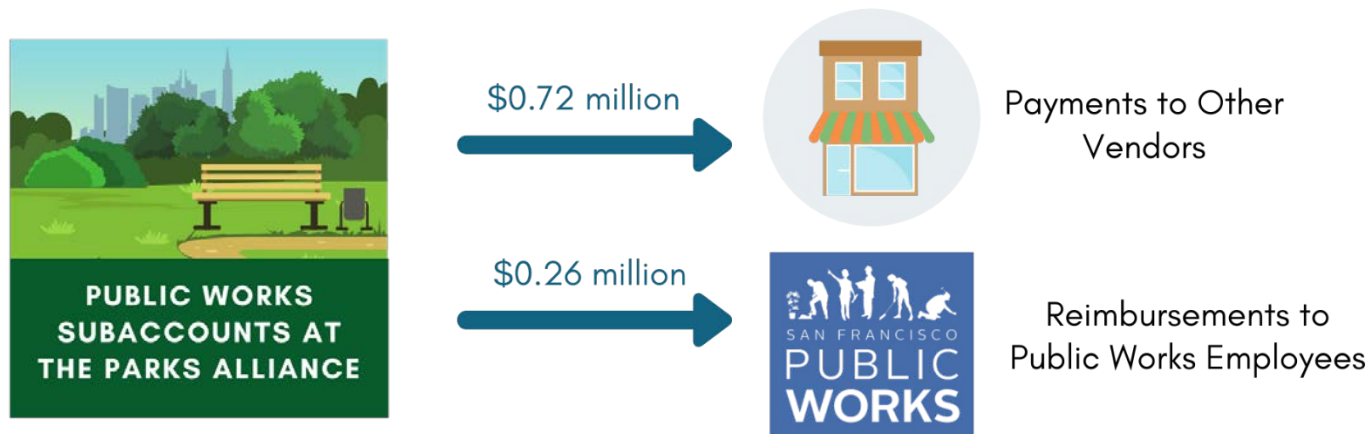
Preliminary Finding

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.

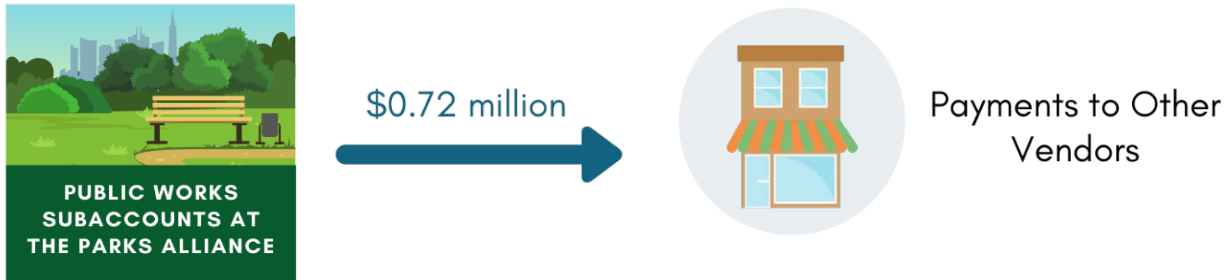
Public Works Used the Parks Alliance's Public Works Subaccounts to Make Payments on Its Behalf



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



\$0.26 million



Reimbursements
to Individuals

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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mark.p.delarosa@sfgov.org

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Haney; Peskin

Subject:

Campaign and Governmental Conduct Code - Behested Payments

The text is listed:

Ordinance amending the Campaign and Governmental Conduct Code to expand the definition of interested party, to prohibit appointed department heads from soliciting certain behested payments, and to require department heads to report solicitation of certain behested payments

Signature of Sponsoring Supervisor: /s/ Matt Haney

For Clerk's Use Only