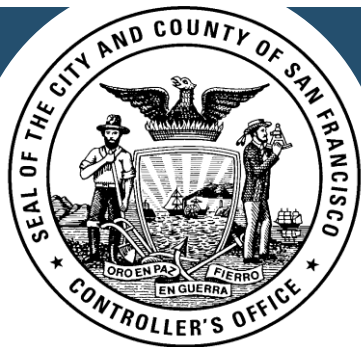


Public Integrity Review

Preliminary Assessment:

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

Report Issued April 8, 2022



CITY & COUNTY OF SAN FRANCISCO

Controller's Office
City Services Auditor

Completed Public Integrity Reporting

Since 2020, the Controller's Office has completed 9 Public Integrity reports (including 1 audit) performed in coordination with the City Attorney, to improve and strengthen city systems, policies, internal controls, and transparency. To date, we have issued 58 recommendations and we continue to monitor their implementation.

1. [San Francisco Public Works Contracting](#) (June 29, 2020)
2. [Gifts to Departments Through Non-City Organizations Lack Transparency and Create "Pay-to-Play" Risk](#) (September 24, 2020)
3. [San Francisco's Debarment Process](#) (November 5, 2020)
4. [Ethical Standards for Contract Award Processes of the Airport Commission and Other Commissions and Boards](#) (January 11, 2021)
5. [Refuse Rate-Setting Process Lacks Transparency and Timely Safeguards](#) (April 14, 2021)
6. [12-month Status on Public Integrity Recommendations](#) (August 4, 2021)
7. [Department of Building Inspection's Permitting and Inspections Processes](#) (September 16, 2021)
8. [SFPUC Community Benefit / Social Impact Partnership Program Audit](#) (December 9, 2021)
9. [San Francisco Department of the Environment's Relationship with Recology and Lack of Compliance with Ethics Rules](#) (April 8, 2022)

SF Environment & Recology

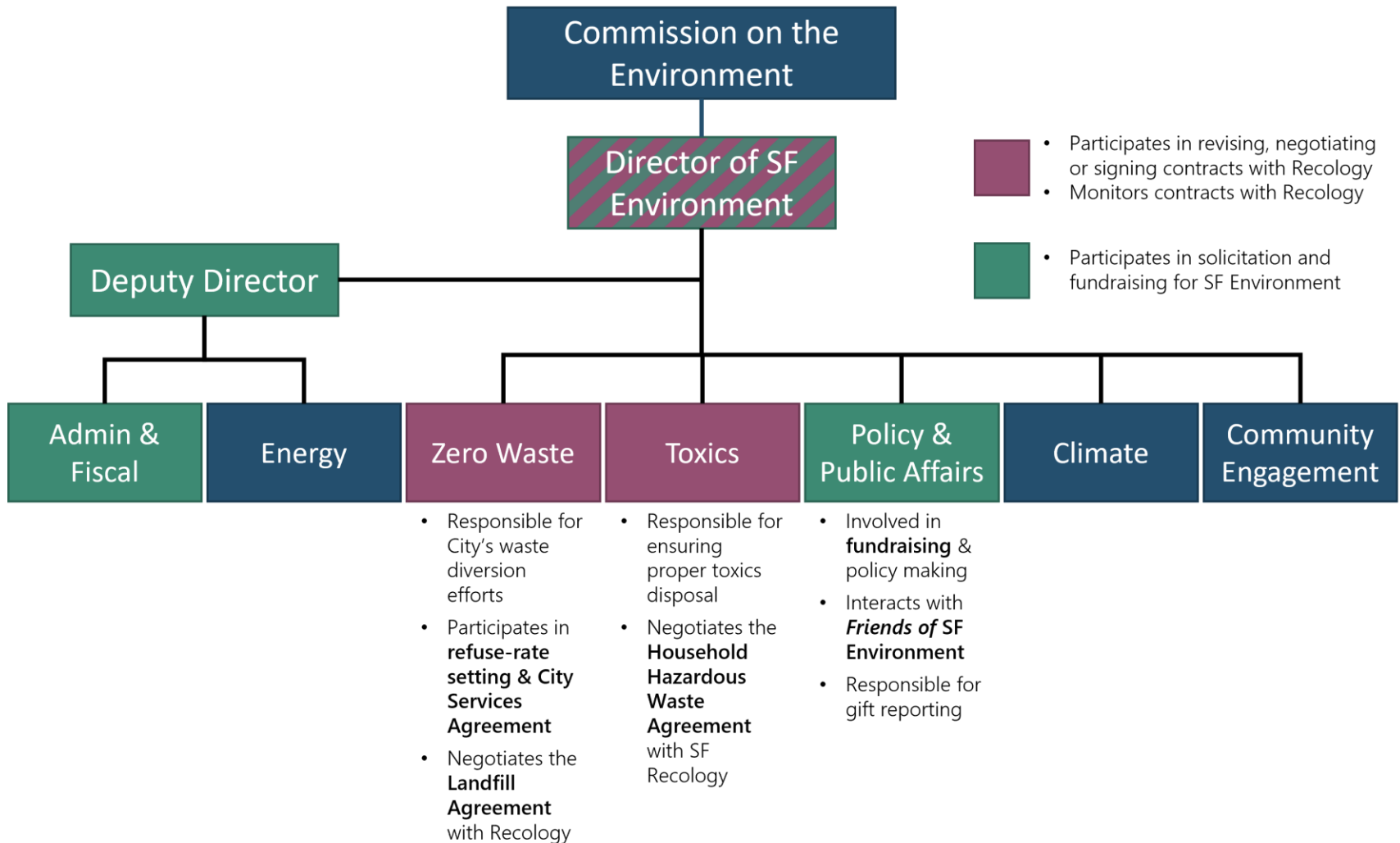
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- This preliminary assessment specifically addresses the relationship between the **SF Environment and SF Recology** and examines SF Environment's adherence to ethics laws and mandatory gift disclosure reporting.
- The Controller issued three preliminary assessments in coordination with the City Attorney specifically relevant to this report (**Public Works Contracting, Non-City Organizations, Refuse Rate-Setting Process**).
- **SF Environment was created by City Charter** in 1996-97 to manage environmental programs, with responsibilities including zero waste, public information and outreach, toxics reduction, environmental justice, and clean energy efforts.
- The **Commission on the Environment is a seven-member** mayoral appointed Commission, which sets policy for SF Environment and advises the Mayor and Board of Supervisors on environmental issues.
- **SF Recology is privately held waste management company** headquartered in San Francisco that provides refuse services to residential and commercial customers in San Francisco and other municipalities in multiple states.

SF Environment & Recology

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- SF Environment's programs are involved in **solicitation, fundraising, and contract monitoring of SF Recology.**



SF Environment's Refuse Rate Setting Role

Preliminary Finding

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

- Although the Public Works Order does not provide information about SF Environment's role, SF Environment participates at all phases of the rate-setting process and assists in monitoring compliance with the Rate Order.
- SF Environment also receives funding in their budgets from rate-payers as approved through the rate-setting process.
- SF Environment employees viewed their role in the rate setting process as advisory and related primarily to zero waste goals.

Recommendation

- Policymakers should revise the refuse rate-setting process and procedures to clearly define SF Environment's roles, responsibilities, and involvement in the refuse rate-setting process.

Preliminary Finding

SF Environment Director Raphael asserted a lack of understanding of ethics rules despite ethics trainings, and she did not prioritize the importance of ethics rules.















- SF Environment employees, including the Director, regularly accepted gifts from Recology, a restricted source.
 - *City officers and employees may not solicit or accept gifts from a person who they know or have reason to know is a restricted source. A restricted source includes a company who is doing business with or seeking to do business with the public official's department.*
- SF Environment did not require staff involved in contracting to take mandatory ethics training despite a mandatory directive from DHR.
- Many SF Environment employees believed they could not or should not solicit donations for Earth Day from Recology only during the refuse rate process. Many did not understand that Recology was a restricted source.
- Regardless of training completed, city employees are required to comply with ethics laws and a lack of training or understanding of the rules does not generally absolve employees of their responsibility for ethics violations.

Preliminary Finding

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

- Director Raphael solicited donations from Recology for Earth Day in 2015, 2019, and 2020. Director Raphael signed contracts with Recology in 2015 and 2019, within weeks or months after soliciting from Recology in those years. Although the general goal of fundraising for the Earth Day event was appropriate, she should have at least been suspicious of Recology's intent given the finalization of the Landfill Disposal Agreement.
- The following slide shows a timeline depicting these solicitations, the limited duration of the refuse rate-setting process, and the continued involvement of SF Environment in recommending regular disbursements of zero waste incentive funding (all of which was approved by Public works) from 2014 through 2021.

Lax Tone at the Top & Gifts Rules Non-Compliance

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

 D. Raphael appointed as Director of SF Environment

 D. Raphael attends ethics training

 D. Raphael solicits donations from Recology

Recommendations

- The Commission on the Environment should ensure that SF Environment establishes a strong, ethical tone at the top, modeling the importance of compliance with ethics laws.
- SF Environment and all city departments should work with the Office of Contract Administration and the Department of Human Resources to designate employees who have contracting/purchasing responsibilities, including those who participate in contract negotiations and revisions, and to ensure all training requirements, including mandatory ethics training are met.

Preliminary Finding

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

- *Friends of SF Environment* is a non-city organization created in 2012 to raise funds for and increase awareness of SF Environment's work.
- SF Environment employees had signature authority for *Friends of SF Environment*.
- *Friends of SF Environment* is controlled by SF Environment employees.

Recommendations

- Policymakers should consider codifying the Mayor's Executive Directive 20-02, requiring departments to formalize their relationships with their *Friends of*/non-city organization and defining key components of those agreements.
- SF Environment and all city departments should work with the City Attorney's Office to comply with Mayor's Executive Directive 20-02 and create a memorandum of understanding or ensure the closure of the *Friends of SF Environment* organization and appropriate disbursement of its remaining funds.

Lack of Proactive Disclosure and Narrowly Construed Requests

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Preliminary Finding

Director Raphael and her senior management did not proactively share information about Recology's donations to *Friends of SF Environment*. Senior management also narrowly construed document requests.

- Although not clearly required at the time, SF Environment did not disclose a 2015 \$25,000 donation or a 2019 \$1,100 donation from Recology on its website and did not obtain approval by the Board of Supervisors because Recology made the donations through its *Friends of* organization.
- The department narrowly construed the document requests based on what they said was a literal interpretation and did not initially produce pages of certain spreadsheets that would have revealed Recology's \$25,000 donation in 2015.

Recommendations

SF Environment and all city departments should:

- Proactively seek advice from the City Attorney's Office and the Ethics Commission when questions arise about city ethics rules and ensure full disclosure of relevant facts to facilitate accurate advice.
- Comply with the Mayor's Executive Directive 20-01 and ensure that it timely and proactively discloses information to both the City Attorney and Controller's Office.

Preliminary Findings

- SF Recology employees participated in hiring panels for the selection of SF Environment employees.

Recommendation

- The Department of Human Resources should consider requiring interview panelists to confirm that they have no conflicts of interest before participating in hiring panels and develop policies regarding these matters.
- SF Environment employees improperly charged for tours of the City's waste management facilities and directed payments to a non-City account at *Friends of SF Environment*.

Recommendation

- SF Environment and all city departments should seek approval from the Board of Supervisors if the department wishes to charge fees for tours and ensure that this fee revenue is deposited and recorded in the City's financial system.

Upcoming Public Integrity Reporting

The Controller's Public Integrity Review, performed in consultation with the City Attorney, will continue to assess selected city policies and procedures to evaluate their adequacy in preventing abuse and fraud.

- Review of Recology Refuse Rates
- San Francisco Public Utilities Commission's procurement processes
- Assessment of Recology's Landfill Disposal Agreement
- 24-Month Status on Public Integrity Recommendations
- Citywide ethics reporting

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

Any questions or comments?

File a Whistleblower Report

Report the misuse of funds, waste, or mismanagement in City and County of San Francisco programs and operations by contacting the Whistleblower Program

whistleblower@sfgov.org | (415) 554-7856

Report Public Integrity Tips

Investigators from the Controller's Office staff the tip line consider every allegation of wrongdoing raised by city employees and members of the public. To report suspected public integrity abuses, please contact the Public Integrity Tip Line.

publicintegrity@sfgov.org | (415) 554-7657