

Gayathri Thaikkendiyil
Acting Executive Director

Patrick Ford
Director of Enforcement

San Francisco Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102
(415) 252-3100

BEFORE THE SAN FRANCISCO
ETHICS COMMISSION

In the Matter of) SFEC Complaint Nos. 2122-028
)
Deborah Raphael)
)
Respondent.) **STIPULATION, DECISION, AND ORDER**
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)
)
_____)

THE PARTIES STIPULATE AS FOLLOWS:

1. This Stipulation, Decision, and Order (Stipulation) is made and entered into by and between Deborah Raphael (hereinafter "Respondent") and the San Francisco Ethics Commission (the Commission).
2. Respondent and the Commission agree to settle and resolve all factual and legal issues in this matter and to reach a final disposition without an administrative hearing. Respondent represents that Respondent has accurately furnished to the Commission all information and documents that are relevant to the conduct described in Exhibit A. Upon approval of this Stipulation and full performance of the terms outlined in this Stipulation, the Commission will take no future action against Respondent

regarding the violations of law described in Exhibit A, and this Stipulation shall constitute the complete resolution of all claims by the Commission against Respondent related to such violations. Respondent understands and knowingly and voluntarily waives all rights to judicial review of this Stipulation and any action taken by the Commission or its staff on this matter.

3. Respondent acknowledges responsibility for and agrees to pay an administrative penalty as set forth in Exhibit A. Respondent agrees that the administrative penalty set forth in Exhibit A is a reasonable administrative penalty.

4. Within ten business days of the Commission's approval of this Stipulation, Respondent shall either pay the penalty through the City's online payment portal or otherwise deliver to the following address the sum as set forth in Exhibit A in the form of a check or money order made payable to the "City and County of San Francisco":

San Francisco Ethics Commission
Attn: Enforcement & Legal Affairs Division
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102

5. If Respondent fails to comply with the terms of this Stipulation, then the Commission may reopen this matter and prosecute Respondents under Section C3.699-13 of the San Francisco Charter for any available relief.

6. Respondent understands, and hereby knowingly and voluntarily waives, any and all procedural rights under Section C3.699-13 of the San Francisco Charter and the Commission's Enforcement Regulations with respect to this matter. These include, but are not limited to, the right to appear personally at any administrative hearing held in this matter, to be represented by an attorney at

Respondent's expense, to confront and cross-examine all witnesses testifying at the hearing and to subpoena witnesses to testify at the hearing.

7. Respondent understands and acknowledges that this Stipulation is not binding on any other government agency with the authority to enforce the San Francisco Campaign & Governmental Conduct Code section 1.100 *et seq.*, and does not preclude the Commission or its staff from cooperating with or assisting any other government agency in its prosecution of Respondent for any allegations set forth in Exhibit A, or any other matters related to those violations of law set forth in Exhibit A.

8. This Stipulation is subject to the Commission's approval. In the event the Commission declines to approve this Stipulation, the Stipulation shall become null and void, except Paragraph 9, which shall survive.

9. In the event the Commission rejects this Stipulation, and further administrative proceedings before the Commission are necessary, Respondent agrees that the Stipulation and all references to it are inadmissible. Respondent moreover agrees not to challenge, dispute, or object to the participation of any member of the Commission or its staff in any necessary administrative proceeding for reasons stemming from his or her prior consideration of this Stipulation.

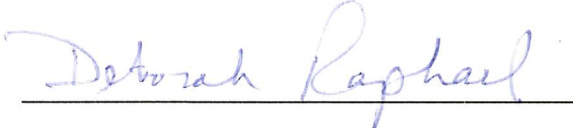
10. This Stipulation, along with the attached Exhibit A, reflects the entire agreement between the parties hereto and supersedes any and all prior negotiations, understandings, and agreements with respect to the transactions contemplated herein. This Stipulation may not be amended orally. Any amendment or modification to this Stipulation must be in writing duly executed by all parties and approved by the Commission at a regular or special meeting.

11. This Stipulation shall be construed under, and interpreted in accordance with, the laws of the State of California. If any provision of the Stipulation is found to be unenforceable, the remaining provisions shall remain valid and enforceable.

12. The parties hereto may sign different copies of this Stipulation, which will be deemed to have the same effect as though all parties had signed the same document.

Dated: 02-28-2023 | 11:37:23 PST  B248CC9FC96449D...

GAYATHRI THAIKKENDIYIL, ACTING EXECUTIVE DIRECTOR
SAN FRANCISCO ETHICS COMMISSION

Dated: 2/8/23 

DEBORAH RAPHAEL

DECISION AND ORDER

The foregoing Stipulation of the parties in the matter of “Deborah Raphael, SFEC Complaint No. 2122-028,” including the attached Exhibit A, is hereby accepted as the final Decision and Order of the San Francisco Ethics Commission, effective upon execution below by the Chairperson.

IT IS SO ORDERED.

Dated: _____

YVONNE LEE, CHAIRPERSON

SAN FRANCISCO ETHICS COMMISSION

Exhibit A

Deborah Raphael (“Raphael”) was appointed Executive Director of the Department of the Environment (the “Department”) in May 2014 and served in that capacity until her resignation in April 2022. As Executive Director, Raphael approved contractual agreements with various entities that do business with the Department. One of these entities, Friends of the SF Environment, is an unincorporated nonprofit entity created to support the Department. Similar entities exist to support other City departments. Under City law, any entities doing business with the Department were considered restricted sources for Raphael and therefore are sources from whom she was prohibited from receiving certain gifts under the law. In 2018, Raphael received a gift in violation of the restricted source rule from Friends of SF Environment, which at that time operated as a non-profit entity that also had a business relationship with the Department. Also in 2018, Raphael signed a Grant Agreement with Friends of SF Environment in violation of financial conflict-of-interest laws. In 2018 and 2019, Raphael also received gifts in violation of the restricted source rule from Recology, a waste management company that was doing business with the Department. Some of these gifts were inaccurately valued or excluded from her annual Form 700 Statement of Economic Interests filed with the Ethics Commission.

I. Applicable Law

Gift Definition

The California Political Reform Act (the “PRA”) defines *gift* to mean any payment that confers a personal benefit on the recipient, to the extent that consideration of equal or greater value is not received. Gov’t Code § 82028(a). This definition applies to the state rules regarding the disclosure of gifts and the annual gift limit. For purposes of the City’s restricted source rule, City law incorporates the meaning of “gift” found in the PRA. See San Francisco Campaign & Gov. Conduct Code § 3.216(b)(2) (“SF C&GCC”).

The PRA and its implementing regulations contain certain exceptions to the definition of *gift*, which are incorporated into City law. One such exception states that a payment is not a gift if, within 30 days, the official reimburses the donor (in full or in part), donates the payment to charity, or returns the payment to the donor. 2 Cal. Code Regs. §§ 18941(c), 18942. If the donor is reimbursed for the payment within 30 days, the value of the gift the official has received is reduced by the amount of the reimbursement. *Id.*

Gift Reporting

City department heads, including the Executive Director of the Department of the Environment, are required to report all gifts totaling \$50 or more in a calendar year from a single source on the Form 700 Statement of Economic Interests (“Form 700”) filed with the Ethics Commission. Gov. Code § 87207(a)(1); SF C&GCC §§ 3.1-102, 3.1-103(b)(1).

Gift Valuation

State regulations govern how gifts are valued for purposes of gift rules. The general valuation of attendance at an invitation-only event is “the official’s ... pro-rata share of the cost of food, catering services, entertainment, and any item provided to the official ... that is available to all guests attending the event.” 2 Cal. Code Regs. § 18946.2.

For attendance at a fundraising event for a nonprofit, tax-exempt organization, another regulation states that the value of a ticket (or admission by invitation) to such an event is either of the following: (1) the nondeductible portion of admission (i.e. the portion that pays for the event’s costs) when a portion of the ticket price is a donation to the organization, or the organization provides information indicating the portion of the admission price constitutes the donation; or (2) if there is no ticket or other official information provided by the organization indicating the value of the nondeductible portion of the admission, the value of the admission is the pro-rata share of the cost of any food, catering services, entertainment, and any other items provided to the official that is available to all guests attending the event. 2 Cal. Code Regs. § 18946.4(a). Additionally, when the event is a fundraising event for a 501(c)(3) nonprofit organization, FPPC regulations allow for the organization itself to provide two tickets or invitations to its own fundraising event to an official, and such tickets are deemed to have no value. *Id.* § 18946.4(b). This exception does not apply when a third party pays for a ticket for an official.

Prohibition on Gifts from Restricted Sources

Under San Francisco law, City officers and employees are prohibited from soliciting or accepting any gift from a person who the officer or employee knows or has reason to know is a restricted source. SF C&GCC § 3.216(b). “Restricted source” means either (A) a person doing business with or seeking to do business with the department of the officer or employee, or (B) a person who during the prior twelve months knowingly attempted to influence the officer or employee in any legislative or administrative action. *Id.* § 3.216(b)(1).

Ethics Commission Regulations (“Commission Regulations”) state that “doing business” with the department of the officer or employee means entering into or performing pursuant to a contract with the department of the officer or employee. SF C&GCC § Reg. 3.216(b)-1.

Commission Regulations provide certain exceptions to the restricted source rule. One exception permits voluntary gifts, other than cash, with an aggregate value of \$25 or less per occasion from restricted sources on no more than four occasions per year. SF C&GCC Reg. § 3.216(b)-5(a).

Financial Conflicts of Interest

The SF C&GCC prohibits any public official from making, participating in making, or in any way attempting to use their official position to influence a governmental decision in which they have a financial interest. SF C&GCC § 3.206(a), incorporating Gov’t Code § 87100. A public official “makes” a governmental decision if, among other things, the official enters into any contractual agreement on behalf of their agency. 2 Cal. Code Regs. § 18704(a).

Financial Interest

A public official has a financial interest in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on the official, a member of the official's immediate family, or certain other individuals, entities, or properties. In 2018, this included any donor who has given gifts to the official with a combined value of \$470 or more within the previous twelve months before the official participates in the government decision. Gov. Code § 87103(e).

Material Financial Effect

State law specifies the instances in which the financial effect of a government decision on any particular financial interest, such as the donor of a gift, is significant enough to be material. Pursuant to the existing regulations in 2018, "the financial effect of a governmental decision on the source of a gift to a public official ... is material if ... the source is a claimant, applicant, respondent, contracting party, or is otherwise named or identified as the subject of the proceeding." Additionally, the financial effect of a governmental decision on the source of a gift to a public official is material if "the source is a nonprofit that will receive a measurable financial benefit or loss . . ." as a result of the decision. . 2 Cal. Code Regs. §§ 18702.4(a), 18702.4(c) (2018).

Reasonably Foreseeable Effect

State law specifies the instances in which the financial effect of a government decision on any particular financial interest, such as the donor of a gift, is reasonably foreseeable. One such instance is when the financial interest "is a named party in, or the subject of, a governmental decision before the official or the official's agency." 2 Cal. Code Regs. § 18701(a). However, a financial interest need not be explicitly involved in the governmental decision for a financial effect on that interest to be reasonably foreseeable. State regulations explain that "if the financial effect can be recognized as a realistic possibility and more than hypothetical or theoretical, it is reasonably foreseeable." *Id.* at § 18701(b).

II. Material Facts and Analysis

Raphael accepted restricted source gifts from Recology.

Acting in her role as Executive Director and on behalf of the Department, Raphael approved a Landfill Disposal Agreement with Recology ("Landfill Agreement") to transport and dispose of the City's refuse to a landfill in Solano County in July 2015. The contract was for a nine-year term and included specific fees Recology would be permitted to assess per ton of refuse disposed of, including a Solid Waste Fee, an Organics-Free Waste Fee, and a Beneficial Use Material Fee. These fees generated through the City's waste collection system, are set in a public process with oversight by an independent Rate Board, placed in an "Impound Account" and allocated to cover city services related to waste management. In total, the allocation to the Department of Environment amounted to over forty percent of the Department's annual revenue.¹ Raphael signed the contract on behalf of the

¹ See CITY & COUNTY OF SAN FRANCISCO, CONTROLLER'S OFFICE, Public Integrity Review Preliminary Assessment: San Francisco Department of the Environment's Relationship with Recology and Lack of Compliance with Ethics Rules p 19.

Department. Raphael later approved amendments to the Landfill Agreement in May 2016 and later also signed a Household Hazardous Waste Agreement with Recology (“Hazardous Waste Agreement”) in March 2019.

During such times that Recology was seeking to enter into these contracts with the Department, and during the full term of each contract, Recology was a restricted source for all Department employees, including Raphael. Raphael knew or should have known that Recology was doing business with the Department, and was thus a restricted source, because she herself approved the contracts. As such, Raphael was prohibited from accepting gifts from Recology beginning in July 2015 at the latest.

In October 2018, Recology donated \$7,500 to the Greenbelt Alliance and received eight tickets to the nonprofit organization’s annual fundraising gala held at the Fairmont Hotel. Raphael received a free ticket to the event from Recology. While the amount paid by Recology for the tickets suggests the ticket price was \$937.50, the reportable value of a gift of a free ticket to a nonprofit fundraiser is the nondeductible portion of admission (i.e., the portion that pays for the event’s costs, not the amount that constitutes a donation to the organization holding the event). Raphael reported her attendance at the event as a gift from Recology on her Annual Form 700 filing for calendar year 2018 worth \$150. Raphael later asserted that the value of the gift was actually \$50 and provided an email communication between her staff and Recology staff in which Recology staff appear to state that the value was \$50. By contacting the actual host of the event, the Greenbelt Alliance, Investigators determined that the gift was worth \$75. Any gift from a restricted source worth over \$25 is unlawful.

On January 24, 2019, Raphael attended Recology’s annual dinner at Recology’s office. This meal occurred two months prior to Raphael signing the Hazardous Waste Agreement with Recology. Raphael did not disclose this on her annual Form 700 until August 2021 when she amended the 2019 Form 700 (the gift should have been disclosed by April 1, 2020). Raphael reported the dinner as being valued at \$25. Raphael stated that she obtained the valuation of the gift following a phone call she and her Department staff placed to Recology to confirm the value of Raphael’s gift. This valuation corresponds to the maximum value of a gift that an official is permitted to accept from a restricted source. Recology attorneys subsequently informed Investigators that the gift was worth \$65.98 under the gift valuation rules set forth in state law. As a gift valued at more than \$50, this meal would have been required to be reported on Raphael’s 2019 Form 700. Because the gift was valued at over \$25, it did not fall within the exception to the restricted source rule for \$25 non-cash gifts.

Raphael accepted restricted source gifts from Friends of SF Environment.

Friends of SF Environment is an organization established to support the works of the Department as well as staff events, retreats, and participation in community events. Although Friends of SF Environment is not a City organization, for a period of time, it was administered by Department employees. Friends of SF Environment operates and publicly identifies itself as a nonprofit organization, although it does not have a formal corporate status. For example, on its Facebook page, Friends of SF Environment describes itself as “the non-profit ally of the San Francisco Department of Environment (SF Environment)” and categorizes itself as a nonprofit organization. Friends of SF Environment also conducts its operations under contract with Community Initiatives, a 501(c)(3) nonprofit organization that “fiscally sponsors” Friends of SF Environment, as Friends of SF

Environment has not attained its own 501(c)(3) status. Under this arrangement, Community Initiatives provides fiscal administrative services, including accepting incoming funds, processing payment requests, and sharing its own nonprofit status with Friends of SF Environment. Department staff generally made the decisions as to how Friends of SF Environment’s funds would be allocated, and Community Initiatives then made a payment based on the Department’s request.

On September 1, 2018, acting in her role as Executive Director and on behalf of the Department, Raphael approved a grant agreement (“Grant Agreement”) with Community Initiatives. The Grant Agreement identified and named Friends of SF Environment as the subject of the Agreement and included terms under which Friends of SF Environment would perform pursuant to the Grant Agreement. The Grant Agreement provided for Friends of SF Environment to receive funds from the Department to contract with third party vendors to provide services to the Department that, according to Department staff, the Department itself was not permitted to contract for under City contracting rules. The Grant Agreement, which was for a four-month period beginning in September 2018 and ending December 31, 2018 and with a value not to exceed \$9,890, awarded \$8,600 to Friends of SF Environment and allowed Friends of SF Environment contract with third party vendors to provide services to support Department initiatives. The services were related to San Francisco’s Climate Action Strategy through the Net Zero Emission Pathways Project and San Francisco’s Healthy Nail Salon Program. Because Friends of SF Environment was to perform pursuant to a contract with the Department, Friends of SF Environment was doing business with the Department and was thus a restricted source for Raphael for the duration of the Agreement.

During the period in which Friends of SF Environment qualified as a restricted source for Raphael and all Departmental employees, Raphael received a gift from Friends of SF Environment in November 2018 in the amount of \$100 in tickets to attend the SF Interfaith Council Breakfast, which, according to Raphael, was on behalf of the Department.

Pursuant to the City’s regulations, Friends of SF Environment was doing business with the Department, and was thus a restricted source, because of the grant agreement that Raphael signed on behalf of the Department. Thus, Raphael’s acceptance of a gift from Friends of SF Environment during the term of the Grant Agreement violated the restricted source rule.

Conflict of Interest

As noted above, in 2018 an official could not make or participate in making a government decision that would have a reasonably foreseeable material financial effect on a person that had given the official \$470 or more in gifts during the preceding twelve months before the time of the decision. Such action would constitute a conflict of interest in violation of state and local law. On September 1, 2018, Raphael approved and signed the Grant Agreement that identified and named Friends of SF Environment as a party that would receive City grant funding under the Agreement. This action violated conflict-of-interest laws.

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Financial Interest

In 2018, an official had a financial interest in the source of a gift or gifts totaling \$470 or more in the preceding twelve months. Raphael reported receiving the following gifts from Friends of SF Environment: a ticket valued at \$200 on October 17, 2017 (Brower Youth Environmental Awards), a ticket valued at \$350 on November 3, 2017 (Committee on the Elimination of Discrimination Against Women), ticket valued at \$50 on November 21, 2017(SF Interfaith Council), a ticket valued at \$200 on November 29, 2017(SF Bay Area Planning and Urban Research Association), and a ticket valued at \$317.50 on June 13, 2018 (Regeneration Project). Thus, between September 1, 2017 and August 31, 2018, Raphael received \$1,117.50 in gifts from Friends of SF Environment. Raphael asserts that all the gifts were tickets for her to attend events on behalf of the Department. Nevertheless, because the total amount received by Raphael exceeded \$470, Friends of SF Environment constituted a financial interest for Raphael on September 1, 2018. Therefore, Raphael was prohibited at that time from participating in any governmental decision that would have a reasonably foreseeable material financial effect on Friends of SF Environment.

Material Financial Effect of the Decision

The decision by Raphael to approve the Grant Agreement had a material financial effect on Friends of SF Environment under the law that was in effect at that time. In 2018, the financial effect of a governmental decision on a source of a gift to a public official was material if “the source [was] a claimant, applicant, respondent, contracting party, or [was] otherwise named or identified as the subject of the proceeding.” 2 Cal. Code Regs. § 18702.4(a). The approval of the Grant Agreement had a material financial effect on Friends of SF Environment because Friends of SF Environment was named in the agreement and received funds under the agreement. The law clearly intended that named parties in a government contract that received funds under the contract would be considered to experience a material financial effect because they are directly involved in the decision to approve the contract.

Additionally, setting aside that Friends of SF Environment was named or identified in the Grant Agreement, the approval of the Grant Agreement also had a material financial effect on Friends of SF Environment under a separate provision of law in 2018 that stated that a decision that results in a “measurable financial benefit” to a nonprofit organization has a material financial effect on the organization. 2 Cal. Code Regs. §18702.4(c) (2018). As described above, Friends of SF Environment operated as a nonprofit organization through the fiscal sponsorship of Community Initiatives, a 501(c)(3) nonprofit organization. Although Friends of SF Environment did not have its own 501(c)(3) status but instead was a fiscally sponsored organization, this fact does not remove Friends of SF Environment from being considered a nonprofit under 2 Cal. Code Regs. § 18702.4. The decision to approve the Grant Agreement resulted in a measurable financial benefit to Friends of SF Environment because Friends of SF Environment was awarded \$8,600 under the Grant Agreement approved by Raphael. This financial benefit is measurable because it directed a specified sum of City funds to go to Friends of SF Environment under the Grant Agreement.

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Reasonably Foreseeable Financial Effect of the Decision

A financial effect of a government decision on any person is reasonably foreseeable if the person “is a named party in, or the subject of, a governmental decision before the official or the official's agency.” 2 Cal. Code Regs. § 18701(a). Friends of SF Environment was identified in the agreement as the organization that would receive and administer the funding and ultimately have control over how the funding would be utilized. Based on the Agreement, Friends of SF Environment received funds from the Department in the amount of \$8,600 that allowed Friends of SF Environment to contract with third party vendors to provide services to support Department initiatives. It was thus reasonably foreseeable that approval of the Grant Agreement would have a financial effect on Friends of SF Environment.

By approving the Grant Agreement, which identified and named Friends of SF Environment as receiving funds through and performing pursuant to the agreement and which also resulted in a measurable financial benefit to Friends of SF Environment, Raphael made a governmental decision in which she had a financial interest in violation of conflict-of-interest laws.

III. Violations of Law

Counts 1-2

**Accepting gifts from restricted sources
in violation of SF C&GCC Section 3.216(b)**

Count 1: Restricted source gifts from Recology and failure to report one gift from Recology on the Form 700.

By accepting a ticket to the Greenbelt Alliance Gala from Recology, a gift worth \$75.00, in October 2018 during the period in which Recology was a restricted source for her, Raphael accepted a gift from a restricted source in violation of SF C&GCC section 3.216(b). By accepting attendance at Recology’s 2019 annual dinner event, a gift worth \$65.98, in January 2019 during the period in which Recology was a restricted source for her, Raphael accepted a gift from a restricted source in violation of SF C&GCC section 3.216(b). By failing to report the attendance at Recology’s 2019 annual dinner event as a gift on her Form 700, Raphael violated SF C&GCC section 3.1-102(a) and Government Code section 87207(a)(1).

Count 2: Restricted source gift from Friends of SF Environment for the Interfaith Council Breakfast.

By accepting a gift from Friends of SF Environment worth \$100.00 in November 2018 during the period in which Friends of SF Environment was a restricted source for her, Raphael accepted a gift from a restricted source in violation of SF C&GCC section 3.216(b).

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Count 3
Making a governmental decision involving a financial interest
in violation of SF C&GCC section 3.206(a) and Government Code section 87100.

By signing a Grant Agreement directly involving Friends of SF Environment after receiving gifts from Friends of SF Environment totaling \$1,117.50 in the prior twelve months, Raphael made a governmental decision in which she had a financial interest in violation of SF C&GCC section 3.206(a) and Government Code section 87100.

IV. Penalty Assessment

This matter consists of five violations of the San Francisco Campaign and Governmental Conduct Code. The San Francisco Charter authorizes the Commission to assess a maximum administrative penalty of \$5,000 per violation. SF Charter § C3.699-13(c). These five violations are contained within three counts as listed above. The Charter also authorizes the Ethics Commission to impose a penalty of three times the value of any unlawfully received gifts. SF Charter § C3.699-13(c)(i)(3). Because there are five violations and \$5,000 is the maximum penalty for each of the violations, the maximum potential administrative enforcement penalty in this matter is \$25,000.

Under Ethics Commission Enforcement Regulation 9(D), when determining penalties, the Ethics Commission considers all of the relevant circumstances surrounding the case, including but not limited to: (a) the severity of the violation; (b) the presence or absence of any intention to conceal, deceive, or mislead; (c) whether the violation was deliberate, negligent or inadvertent; (d) whether the violation was an isolated incident or part of a pattern; (e) whether the respondent has a prior record of violations of law; and (f) the degree to which the respondent cooperated with the investigation and demonstrated a willingness to remedy any violations.

Considering the penalty factors enumerated above, the violations in this case are of moderate severity. First, the restricted source rule is one of the bedrock rules of the City's ethics laws. It seeks to ensure that City officials do not receive gifts from those doing business with their department that have the potential to unduly influence their official actions or that could create the appearance of pay-to-play in the eyes of the public. Any violation of the restricted source rule compromises the public's trust in the integrity of City government when officials are viewed as placing personal benefit over public duty. Thus, even the acceptance of small gifts from a restricted source has the potential to erode public trust.

Similarly, Form 700 disclosure is a fundamental tool for public officials to detect and avoid conflicts of interest and for the public to identify such conflicts. The failure to disclose gifts on the Form 700 deprives the public of the ability to identify potential conflicts of interest that could arise if the source of a gift becomes the subject of a government decision being made by the gift recipient.

In addition to the restricted source rule and Form 700 disclosure violations, Raphael also violated the law against financial conflicts of interest when she made a governmental decision that had a material financial impact on a source that had provided her gifts in the preceding twelve months, Friends of the SF Environment. A financial conflict creates the danger that an official can use their public

office for their own personal gain, which is an abuse of the public's trust.

Raphael's position as a department head is also relevant to her violations. As a department head who has completed annual ethics training requirements since 2016, Raphael should have been familiar with the restricted source rule, the Form 700 filing requirements, and financial conflict-of-interest rules. An ethics violation by a department head has a much greater potential for negative impacts than other City employees and can lead to a poor culture of ethics within their department.

In mitigation, Raphael has been fully cooperative with Ethics Commission staff since the violations were first brought to her attention in October 2021. Well before that communication, Raphael herself caught errors and attempted to reimburse Recology for the amount of the gifts she received that she believed to be unlawful. She also amended three annual Form 700 filings to provide more information about the gifts she received from Recology. These steps indicate a desire to rectify past problems. With regards to the violations involving Friends of SF Environment, this entity had a unique structure and was designed solely to support the Department, not to seek business with it for its own interest. Also, the grant amount that went to Friends of SF Environment was minimal, and all of the funds went directly to programs to support the Department's work, rather than to the entity itself. Similarly, Raphael states that all tickets she received as gifts were used to represent the Department and its programs. Last, Raphael has no prior Ethics violations.

In balancing the above facts and considering the penalty factors and prior analogous enforcement cases resolved by the Ethics Commission, and to promote a future deterrent effect, Staff proposes, and Raphael agrees to, the following penalties for the above listed violations of City law:

Count 1 (Restricted Source Gifts from Recology and Failure to Report One Gift): \$1,500

Count 2 (Restricted Source Gift from Friends of SF Environment): \$500

Count 3 (Conflict of Interest): \$2,000

TOTAL PENALTIES: \$4,000