COUNCIL AGENDA: 12-6-11
ITEM: 2.11

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: Dennis Hawkins, CMC
City Clerk

SUBJECT: **SEE BELOW**

DATE: 11-21-11

SUBJECT: AUDIT OF ANNUAL FORM 700 FILERS

RECOMMENDATION

As recommended by the Public Safety, Finance and Strategic Support Committee on November 17, 2011 and outlined in the attached memo previously submitted to the Public Safety, Finance and Strategic Support Committee, accept the audit of Annual Form 700 Filers.

CITY OF
SAN JOSE
CAPITAL OF SILICON VALLEY

Office of the City Auditor
Sharon W. Erickson, City Auditor

November 10, 2011

Honorable Mayor and Members
Of the City Council
200 East Santa Clara Street
San José, CA 95113

Audit of Annual Form 700 Filers

The Political Reform Act of 1974 requires many state and local public officials and employees and some government consultants to disclose certain personal financial holdings on a "Statement of Economic Interests," also known as the Form 700. The City of San Jose requires these individuals also file a separate "Family Gift Reporting Form." For calendar year 2010, the City Clerk's Office listed 1,066 persons who were required to file these annual forms including 924 individuals and 142 consultants. The purpose of our review was to determine whether the City had identified everyone who should be filing these forms, and to document whether they had filed timely or not.

Annual filings for individual employees, public officials, and members of City boards and commissions for calendar year 2010 were reasonably complete. As of July 20, 2011, only 12 of the 924 individuals had not filed their Form 700. However, 73 individuals had not filed timely, and 99 had not filed their Family Gift Reporting Form. Many of these individuals had been contacted numerous times by the City Clerk's Office regarding their non-compliance. Individuals who file a Form 700 after the April 1st deadline are liable for a late fine not to exceed $10 per day to a maximum of $100. We recommend that the City impose penalties on late and non-filers as appropriate.

Compliance among consultants listed in the City Clerk's database appears to be significantly less. Only 45 of 142 consultants listed as Form 700 annual filers in the City Clerk's database actually filed the annual Form 700 (4 of those were late). Furthermore, only 36 consultants filed the annual Family Gift Reporting Form. However, we found that at least some of the listed consultants were no longer working under contract with the City, and some consultants who were in fact working for the City were not on the list. We recommend the City Clerk's Office require consulting firms whose employees should be filing these forms to coordinate and file assuming office statements for their assigned employees upon the commencement of work. We further recommend that the City Clerk's Office annually notify those consulting firms of the requirement for their assigned employees to file annual forms.

Finally, the process for submitting and tracking the forms is extremely time consuming and labor-intensive. In our opinion, the City should seek legislation to allow it to participate in the State's electronic filing program. Otherwise, database information and communication issues will continue to plague the system causing some annual filers to not be identified, not be notified, file late, file incompletely or not at all, or to appear to have filed late when they had actually filed timely.

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We will present this report at the November 17, 2011 meeting of the Public Safety, Finance, and Strategic Support Committee. We would like to thank staff from the City Clerk's Office, City Attorney's Office, and City Manager's Office for their time, information, insight, and cooperation during the audit process. The City Clerk's response to the audit is attached on yellow pages.

Respectfully submitted,

Sharon W. Erickson

Sharon W. Erickson
City Auditor

finaltr
SE:lg

Audit Team: Steve Hendrickson
Robin Opheim

cc: Dennis Hawkins
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Introduction

In accordance with the City Auditor's 2011-2012 Audit Work Plan, we have completed an audit of the City of San José's Form 700 Annual Filing Process. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based upon our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. We limited our work to those areas specified in the Objective, Scope, and Methodology section of this report.

The City Auditor's Office thanks the City Clerk's Office, City Attorney's Office, and City Manager's Office staff for their time and cooperation during this audit.

Background

Political Reform Act of 1974 and the Fair Political Practices Commission

The Political Reform Act (PRA) of 1974, Government Code sections 81000-91014, requires many state and local public officials and employees to disclose certain personal financial holdings. One of the PRA's stated purposes declares:

> *Assets and income of public officials which may be materially affected by their official actions should be disclosed and in appropriate circumstances the officials should be disqualified from acting in order that conflicts of interest may be avoided. (California Government Code section 81002(c).)*

The "Statement of Economic Interests" (SEI), also known as the Form 700, is the form that is used for this purpose. There are two categories of public officials and employees who must disclose their personal financial interests.

- High-ranking, elected officeholders who are subject to the most extensive disclosure requirements under the Act – Section 87200 – they are sometimes referred to as "87200 filers". The Form 700 goes to the City Clerk (filing *official*) who retains a copy and sends the original to the FPPC (filing *officer*).

- Employees designated by the City's adopted Conflict of Interest Code must also disclose their financial interests (required disclosure categories may be more or less extensive depending on a designated employee's position description, authority, and responsibility). The City Clerk also receives these forms and retains the originals – so for the employees' forms the City Clerk is the filing *officer*.

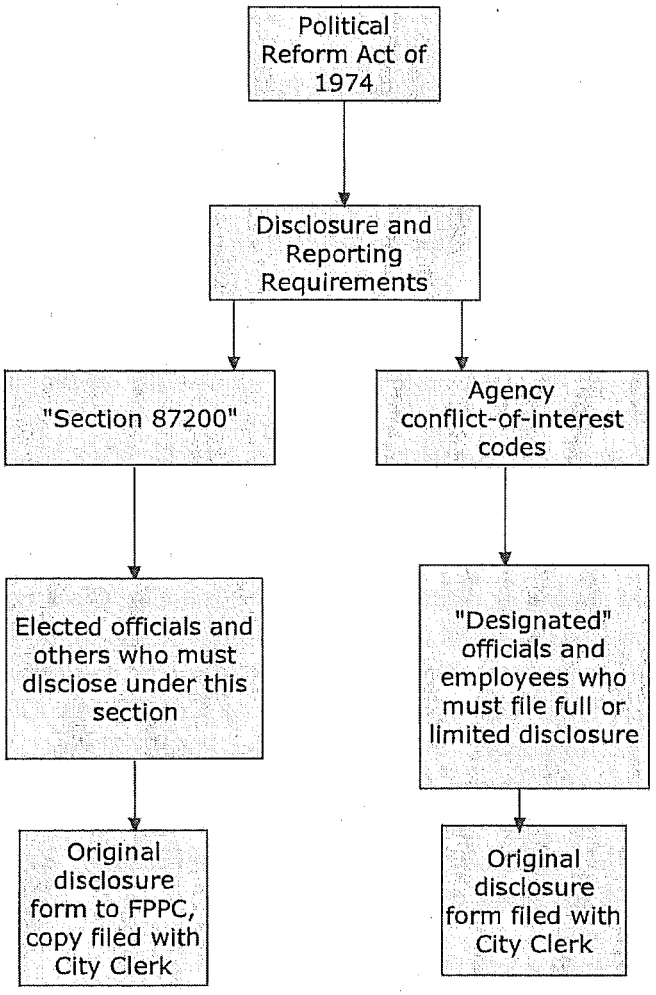
There are five types of statements filed on the Form 700.

- Assuming office
- Annual
- Leaving office
- Candidate
- Amended statements

In some cases, consultants to government agencies are required to file Form 700s under local agencies' conflict of interest codes. Generally speaking, consultants who perform the duties of a government employee over a significant period of time, or who make or participate – without significant supervisory review – in the making of government decisions, may be required to file.

The Act established a complex, *decentralized* system of managing this disclosure in which each state and local government agency is required to adopt and implement a separate conflict of interest code, which is to be reviewed and amended every two years. The administration of this decentralized system is divided between the Fair Political Practices Commission (FPPC) and responsible officials at more than 7,000 state and local agencies. A basic diagram of how the law works is shown below.

Exhibit 1: Disclosure and Reporting Requirements



The Act requires individuals to file disclosures, while the *Filing Officer* (the City Clerk) is responsible for identifying and notifying those individuals who should file and also for providing an appropriate filing process for them.

Periodic Updates of Designated Positions and the Individuals Filling Those Positions

Pursuant to Section 18730 of the Government Code, every two years the City is required to review its Conflict of Interest Code for accuracy and amend it as necessary regarding designated positions required to file the Form 700. The bi-annual review process begins in "even" years in the fall. In preparation for the latest review, in August 2010, the City Clerk's Office, City Attorney's Office, and City Manager's Office worked with City departments to review and update the list for the amended Resolution. Specifically, departments assigned liaisons to work with these offices during the Conflict of Interest Code review to identify each individual in a designated position required to file the annual Form 700. The current Resolution 75654, adopted December 7, 2010, lists designated positions and reportable disclosure categories.

The list of designated positions usually remains somewhat consistent from year to year, but individuals move in and out of these positions. As a result, former filers may now become non-filers and vice versa. Other reasons individuals' status as Form 700 filers may change are due to expanded or reduced job responsibilities and job rotation, primarily in the Department of Transportation and the Police Department. The City Clerk's electronic filing system, NetFile, is the records database for Form 700 filers. Because some filers' status changes, the City Clerk's Office must update the NetFile records on an annual basis as well.

City Clerk's Annual Process

Each year the City Clerk's Office systematically identifies and notifies individuals – elected officials; Council appointees; board members and commissioners; City employees; and consultants – who are required to file the Form 700. The City also requires a separate Family Gift Reporting Form (FGRF) be filed along with the Form 700. The forms are due in the City Clerk's Office by April 1st.

At the beginning of the calendar year, the City Clerk performs a labor-intensive process to ensure all filers are identified and can be notified to file. The process begins in January. The City Clerk meets with departments to identify individual filers. Once this has been done, the City Clerk's Office provides the list to Human Resources. HR check-marks a Form 700 box on the PeopleSoft Position Identification screen for those employees working in the designated positions. When this is completed, the City Clerk is able to send out the notification emails to these individuals, usually by the end of February. Late notices go out to non-filers 30 days after the April 1st deadline.[1]

Electronic Filing Pilot Program

The PRA of 1974 required tens of thousands of public officials to complete and file the Form 700 in paper form. In February 2008, AB 2607 (Davis) was introduced to amend the PRA to implement a pilot program to permit the electronic filing – "e-file" - of statements of economic interests directly with the FPPC. Several counties and the City of Long Beach are participating in the pilot program and no longer need to provide hard copy of designated employees' Form 700s to their local filing officers. The FPPC still receives the original Form 700s for 87200 filers as they were not included in the pilot program.

There are a few electronic filing system vendors; the City currently contracts with NetFile, and City of San Jose Form 700 filers are able to file electronically. However, because the City is not part of the pilot program, FPPC regulations require filers to provide the Filing Officer (in this case, the City Clerk) with a "wet" signature – an originally-signed hard copy of their Form 700.

[1] It should be noted that the City Clerk's Office recently found a way to use those PeopleSoft designations to identify employees who should be filing assuming office and leaving office statements.

Objective, Scope, and Methodology

The objective of our audit was to determine whether the City identifies all Form 700 filers who are required to file the Annual Form 700 Statement and document whether they filed timely or not. To achieve our audit objectives we:

- Obtained and reviewed the Political Reform Act (PRA) of 1974;
- Reviewed the Fair Political Practices Commission regulations regarding compliance with the PRA;
- Obtained and reviewed the City's current Resolution 75654 - Conflict of Interest Code;
- Interviewed staff in the City Attorney's, City Clerk's, and City Manager's Office;
- Accessed the Form 700 annual filer status report as of July 20, 2011 in the NetFile database;
- Reviewed employee information in the PeopleSoft database;
- Searched consultant contracts in the Council History and Document (CHAD) system;
- Conducted interviews with other jurisdictions – City of Oakland, City and County of San Francisco, County of Santa Clara, and City of Long Beach;
- Interviewed legislative staff at the Fair Political Practices Commission;
- Examined each annual Form 700 filed for calendar year January 1, 2010 to December 31, 2010; and
- Compared the Housing and Retirement Services Departments' current lists of contracts with the July 20, 2011 NetFile Report.

It should be noted that we limited our review to the Annual Form 700 statement filings. Specifically, we excluded Form 700 Assuming and Leaving Office statements from our audit scope. We did not review these filings because, according to the City Clerk, NetFile records for these types of Form 700 filers are changing daily at this time due to the employee layoff and bumping process at the end of fiscal year 2010-2011.

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Finding I Most Form 700 Filers Have Filed As Required, But There Is Room For Improvement

Summary

The passage of the Political Reform Act of 1974 established an ethics requirement for public officials to disclose certain personal financial holdings if they make, or participate in making, a government decision that has a reasonably foreseeable material financial effect on personal financial interests.

Our review found that annual filings for 2010 for individual employees, public officials, and members of City boards and commissions were reasonably complete. However, compliance among consultants appeared to be significantly less. The process for submitting and tracking Form 700s is extremely time consuming and labor-intensive. In our opinion, the City should seek legislation to allow it to move to an all-electronic filing system. Otherwise, database information and communication issues will continue to plague the current process and cause some Annual Form 700 filers to:

- Not be identified
- Not be notified
- File late
- File incompletely
- Not file at all
- Appear to be late filers when they have filed timely

As a result, some annual Form 700 filers' potential conflicts of interest are not disclosed timely and/or completely or are not disclosed at all.

Most Designated Employees and Other Individuals Filed as Required, But There Is Room for Improvement

According to a City Clerk's report, for calendar year 2010, there were 1,066 individuals required to file the Annual Form 700. City employees, public officials, or members of City boards and commissions comprised 924 of the 1,066; the remaining 142 individuals were consultants.

As of July 20, 2011, there was 99 percent compliance with Form 700 reporting requirements among City employees, public officials, and members of City boards and commissions. Nearly all of those individuals had filed their Form 700 -- only 12 of 924 individuals were 'non-filers' as of the July 20, 2011 report date.

However, 73 individuals had not filed their Form 700 timely, and 35 individuals had not signed their form. Moreover, 44 individuals were late in signing and submitting their Family Gift Reporting Form, and 99 individuals had not filed their Family Gift Reporting Form at all.

Compliance among consultants listed in the City Clerk's database was significantly less. As discussed later in this report, we found that at least some of the listed consultants were no longer working under contract with the City, and some consultants who were in fact working for the City were not on the list. Nonetheless, as of July 20, 2011, only 45 of 142 listed consultants had filed their Form 700. Most of those were timely (only 4 were late) and most were signed (only 4 consultants did not sign their Form 700). However, only 36 consultants filed Family Gift Reporting Forms. This suggests there is considerable room for improvement.

Penalties

Pursuant to Government Code Section 91013, any person who files a Form 700 after the April 1st deadline for annual filers is liable for a late fine which shall not exceed $10 per day to a maximum of $100. It should be noted that the City has never imposed fines on annual Form 700 filers who have missed the deadline. Further, pursuant to an April 2008 City Auditor's report, *An Audit of Retirement Services Travel Expenses*, that found Retirement Board members had not filed the Form 700, the Conflict of Interest Code Resolution was amended and now states that in the event a designated filer does not file the Form 700 in a timely manner, and after the City Clerk has sent one reminder to the filer, the City Clerk will notify the Department Director that the filer – whether they are an employee, board member, commissioner, or consultant - has not complied with the disclosure requirements. If the designated filer is an employee, they may be recommended for disciplinary action by the Department. It should be noted that prior to the code amendment, Department Directors were not notified when employees were non-compliant in filing their disclosure statements.

Recommendation #1: During each reporting cycle, the City Clerk should notify the City Manager and department heads of non-filers in their departments and should impose penalties on late and non-filers. Furthermore, the City Manager and department heads should consider disciplinary action on designated City employees who file untimely or not at all.

Not All Consultants Are Filing the Financial Disclosure Form 700s

In some cases, consultants to government agencies are required to file statements of economic interests under agency conflict of interest codes. Generally speaking, consultants who perform the duties of a government employee over a

significant period of time, or who make or participate – without significant intervening review – in the making of government decisions, may be required to file.

As cited above, only 45 of 142 listed consultants filed the annual Form 700, however the City's consultant list contained errors. Specifically, the City Clerk's NetFile database:

- Listed consultants no longer working under contract with the City as Form 700 filers (e.g., at least 15 of the 70 investment services consultants listed were no longer working for the Department of Retirement Services);
- Did not list all consultants working for the City who should have filed the Form 700 (e.g., only two of seven consulting Hearing Officers under contract to the Housing Department were listed);
- Did not document 20 of the listed consultants who 'wet-filed' their Form 700 in person at the City Clerk's Office.

As a result, some consultants are not disclosing potential conflicts of interest timely or are not filing the Form 700 at all.

Conflict of Interest Code Language in Contracts

State and local government agencies are required to determine who is, and who is not, subject to the Act's disclosure requirements as a consultant. However, the circumstances under which consultants must file are not clear-cut. The FPPC Regulation 18701 sets up a two-part test, and the second part, in turn, has two sub-parts. Specifically,

> *Regulation 18701(a)(2), a "consultant" is an individual who, pursuant to a contract with the state, either (A) makes certain specified types of governmental decisions; or (B) serves in a staff capacity and in that capacity, either (1) participates in making a governmental decision, or (2) performs the same or substantially all the same duties for the agency that would otherwise be performed by an individual holding a position with the agency that is specified in the agency's conflict-of-interest code.*

The City of San José uses two consultant contract templates with conflict of interest language – the 'short' and the 'long' form. The short form simply states the individual shall avoid all conflict of interest while providing services to the City. The long form expressly requires the consultant to be a Form 700 filer and includes an exhibit that describes the consultant's required disclosure categories.

The staff attorney discusses with City staff when preparing or reviewing a contract to decide whether the consultant should be a filer or not. This decision is normally based on type and length of service provided; compensation amounts are also sometimes considered. However, a consultant may NOT be designated as a filer if there will be significant City review of the consultant's work (i.e., a situation where City employees have expertise and will be closely reviewing the consultant's work).[2]

Providing Guidance About Which Consultants Should File

Although the City Clerk analyzed 10 years of City contractual services and developed a list of the types of services that could require consultants to file the Form 700, the definitions are not always simple. For example, one consulting agreement might require filing of a Form 700 while another agreement of similar dollar value and timeframe might not require filing of a Form 700 because of the level of staff supervision of the final work product. Another challenge confronting this process is that, effective July 2011, the City Attorney's Office no longer reviews consultant agreements in the amounts of $100,000 or less. For these reasons, additional guidance would be helpful about which conflict of interest template to use.

An August 2001 memorandum from the Department of Justice to State client agencies attempted to answer questions and clarify when consultants should file. In March 2011, the FPPC issued Form 804 "Agency Report of New Positions and Consultants". However, this document is still in draft form.

Late in 2010, the County of Santa Clara began using template forms it created – "Consultant Applicability Analysis" and "Disclosure Determination". According to the Office of the County Counsel, they are "works in progress", still being refined and subject to further modification if the FPPC finalizes its Form 804 as the new prescribed form to use. Pending the release of the FPPC Form 804, the City may need to develop template forms as well to help staff determine when consultants should file.

Recommendation #2: The City Attorney's Office should provide instructions to department and Purchasing staff to facilitate the identification of consultants who should be Form 700 filers. In addition, the department should notify the City Clerk in cases where a contract terminates early or the designated consultant's Assigned Employee(s) change.

[2] It should be noted that not all jurisdictions handle this problem in the same way. We interviewed staff at the City and County of San Francisco Legislative Office who stated the City/County and the Office feel, by definition, if you are hiring a consultant you are looking for someone outside of the city to work in an expert or advisory capacity – their advice and recommendations will be relied upon -- so for the most part San Francisco considers consultants to be required filers.

Tracking Consultants by Firm Rather Than by Name

The City Clerk's Office Council History and Documents (CHAD) database indicates which contracts have Form 700 filer requirements. However, the database tracks Form 700 filer requirements by firm or company name. As a result, the Clerk's Office has no way of identifying the consultants' assigned employees who are actually performing the work and who should be Form 700 filers. On the other hand, the NetFile database tracks consultant firms' employees by name, however, as was shown above, the database may not be an accurate reflection of the individuals the firms employ who are currently working on City projects.

During the course of our audit, we identified some consultants' assigned employees who did not file the Form 700 assuming office statement timely, namely, within thirty days of commencing work with the City. The Conflict of Interest section in one of the City's consulting contracts states that, in the event the City determines to require the consultant's assigned employee(s) to file a Form 700, the City will notify the consultant of the requirement and also provide instructions regarding the economic interests categories subject to disclosure. The consultant shall then cause their assigned employees to complete and file the assuming office Form 700 with the City Clerk's Office no later than thirty days of the Form 700 notice, and to file annually thereafter while they provide services to the City.

Recommendation #3: To ensure designated consultant firms' assigned employees file their Form 700s timely,

(a) the City Clerk should require such firms to coordinate and file assuming office statements for their assigned employees upon the commencement of work and

(b) the City Clerk should annually notify those firms whose contracts are still valid of the requirement for their assigned employees to file the Annual Form 700.

The City's Participation in the State's Electronic Filing Pilot Program Would Improve the Process

The sheer volume of filers (more than 1,000 individual filers for calendar year 2010) and number of electronic and hard-copy documents (including multiple pages and forms for each filer) make for a monumental task in the City Clerk's Office that consumes a significant portion of a staff member's time. Tracking of Form 700 filer information is complicated by the fact that it is reported in different formats in the City's Conflict of Interest Code and the NetFile and PeopleSoft systems. Specifically, the Conflict of Interest Code lists designated

employees by position name, while they are entered according to employee identification number in the PeopleSoft database, and listed alphabetically by last and first name in the NetFile account records.

Electronic Filing Pilot Program

The PRA of 1974 required tens of thousands of public officials to begin filing the Form 700 in paper form. Filing officials in jurisdictions throughout California are required to retain designated employee filers' original forms and retain copies of 87200 filers' forms, submitting the originals to the FPPC.

In February 2008, AB 2607 (Davis) was introduced to amend the PRA and authorize the Counties of Los Angeles, Merced, Orange, and Stanislaus to participate in a pilot program from January 1, 2009 to January 1, 2012 to permit the electronic filing of statements of economic interests. According to the author's office (Davis), the statute would provide constituents the option of filing their Form 700s using a secure electronic template, providing a safe, cost-effective, and workload-reducing option for the filer to use to fulfill their annual filing obligation. In June 2010, a second bill, AB 1921, was introduced and passed, amending AB 2607 to add the counties of Santa Clara and Ventura, as well as the City of Long Beach, to the pilot project. A third amendment, AB 182, extended the pilot program termination date from March 31, 2012 to December 31, 2012.

Participating agencies were required to submit reports to the FPPC by July 1, 2011, describing their experiences with the program. The FPPC was required to summarize and submit pilot program results to the State Legislative Analyst by August 15, 2011, who, in turn, is required to provide an evaluation of the pilot program to the State Legislature no later than February 1, 2012. The FPPC reported each of the participating agencies concluded that the pilot program was an overwhelming success, noting:

- Annual cost savings per participant ranged from $21,120 to $86,420
- More efficient and effective interaction with filers and filing officials
- A reduction in late filing
- A reduction in errors
- Simplified filer notification and Form 700 review processes
- More accessible information for the public, filers, and filing officials
- Increased awareness of the Statement of Economic Interests requirements for filers, filing officials, and filing officers.

Electronic Filing Would Clarify and Simplify the City Clerk's Receipt and Tracking of Form 700s

During the annual filing process, the City Clerk tracks both the electronic and the 'wet'-filing dates for each individual. When a filer accesses the Form 700 on the website, the date is automatically imprinted on the form, however, that is not the date the City Clerk records in the NetFile report. Normally, the City Clerk records the file date as the date the Form 700 was actually delivered to the Office – because of the requirement to keep a hard copy on file. As a result, the NetFile report filing date for some Form 700 filers made it appear that the filer had filed late when in fact they had filed timely.

This occurred for the following reasons:

- Even though the filer had electronically filed on time, the Form 700 is not considered valid until the Clerk's Office receives a hard copy with a "wet" signature;
- Some Department liaisons waited to receive all Form 700s before delivering them to the City Clerk's Office, which took place after the April 1st deadline, so timely filers appeared to have missed the deadline;
- The City Clerk may receive the Form 700 timely but without the gift reporting form, in which case the City Clerk reminds the filer about the missing gift reporting form and waits to receive the gift form before entering a file date into NetFile, which in some cases occurred after the deadline; and
- Filing dates may not be able to be entered the same day the Form 700 is received in the Clerk's Office due to other duties.

In our opinion, the City's participation in the electronic filing pilot program would streamline, improve, and increase the accuracy of the Form 700 filing process.

Recommendation #4: The City should seek to amend current legislation to allow the City to participate in the State's electronic filing pilot program.

Including Form 700 Filing Requirements in New Employee Orientations and in the Employee Exit Process Would Also Lighten the Load on the City Clerk's Office

Newly-hired City employees attend a two-part orientation the Office of Employee Relations (OER) and Human Resources present. Human Resources' section is specific to benefits, while OER explains the City's structure and discusses the significance of working in the public sector. Apparently, the orientation does not address the Conflict of Interest disclosure. To ensure that new employees who are assuming office in a designated position are aware of

their conflict of interest disclosure requirements and filing responsibilities, it would be helpful if OER could discuss those requirements during their section of the orientation process.

When a designated employee leaves the City, they are required to file a Form 700 Leaving Office statement within 30 days. Departments use an Employee Exit Checklist to ensure badges and keys are turned in, computer passwords are disabled, and City property is returned; but the checklist does not require the Department to determine whether the Leaving Office statement is necessary. As a result, employees often separate from the City without filing the Form 700 Leaving Office statement. This necessitates the Clerk sending a letter requesting the statement and checking weekly if forms have been submitted. In our opinion, the Leaving Office statement requirement should be added to the Employee Exit Checklist so departments can ensure the City Clerk receives the Form 700 Leaving Office statement from designated employees before they leave City employment.

Recommendation #5: Include information about Form 700 filing requirements in new employee orientation materials and employee exit checklists, as appropriate.

Conclusion

Our review found that annual filings for individual employees, public officials, and members of City boards and commissions for calendar year 2010 were reasonably complete. However, some individuals had not filed their Form 700, had not filed timely, and/or had not filed their Family Gift Reporting Form. Compliance among consultants listed in the City Clerk's database appears to be significantly less. However, at least some of the listed consultants were no longer working under contract with the City, and some consultants who were in fact working for the City were not on the list.

The process for submitting and tracking the forms is extremely time consuming and labor-intensive. In our opinion, the City should seek legislation to allow it to participate in the State's electronic filing program. Otherwise, database information and communication issues will continue to plague the system causing some annual filers to not be identified, not be notified, file late, file incompletely or not at all, or to appear to have filed late when they had actually filed timely.

RECOMMENDATIONS

Recommendation #1: During each reporting cycle, the City Clerk should notify the City Manager and department heads of non-filers in their departments and should impose penalties on late and non-filers. Furthermore, the City Manager and department heads should consider disciplinary action on designated City employees who file untimely or not at all.

Recommendation #2: The City Attorney's Office should provide instructions to department and Purchasing staff to facilitate the identification of consultants who should be Form 700 filers. In addition, the department should notify the City Clerk in cases where a contract terminates early or the designated consultant's assigned employee(s) change.

Recommendation #3: To ensure designated consultant firms' assigned employees file their Form 700s timely, (a) the City Clerk should require such firms to coordinate and file assuming office statements for their assigned employees upon the commencement of work, and (b) the City Clerk should annually notify those firms whose contracts are still valid of the requirement for their assigned employees to file the Annual Form 700.

Recommendation #4: The City should seek to amend current legislation to allow the City to participate in the State's electronic filing pilot program.

Recommendation #5: Include information about Form 700 filing requirements in new employee orientation materials and employee exit checklists, as appropriate.

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CALIFORNIA FORM 700
FAIR POLITICAL PRACTICES COMMISSION
A PUBLIC DOCUMENT

APPENDIX A
STATEMENT OF ECONOMIC INTERESTS
COVER PAGE

Date Received
Official Use Only

Please type or print in ink.

NAME OF FILER (LAST) (FIRST) (MIDDLE)

1. Office, Agency, or Court

Agency Name

Division, Board, Department, District, if applicable — Your Position

► If filing for multiple positions, list below or on an attachment.

Agency: _____ Position: _____

2. Jurisdiction of Office *(Check at least one box)*

☐ State
☐ Multi-County _____
☐ City of _____
☐ Judge (Statewide Jurisdiction)
☐ County of _____
☐ Other _____

3. Type of Statement *(Check at least one box)*

☐ **Annual:** The period covered is January 1, 2010, through December 31, 2010.

-or-

The period covered is ____/____/____, through December 31, 2010.

☐ **Assuming Office:** Date ____/____/____

☐ **Candidate:** Election Year _____ Office sought, if different than Part 1: _____

☐ **Leaving Office:** Date Left ____/____/____ *(Check one)*

○ The period covered is January 1, 2010, through the date of leaving office.

○ The period covered is ____/____/____, through the date of leaving office.

4. Schedule Summary

Check applicable schedules or "None."

► **Total number of pages including this cover page:** _____

☐ **Schedule A-1** - *Investments* – schedule attached
☐ **Schedule A-2** - *Investments* – schedule attached
☐ **Schedule B** - *Real Property* – schedule attached
☐ **Schedule C** - *Income, Loans, & Business Positions* – schedule attached
☐ **Schedule D** - *Income – Gifts* – schedule attached
☐ **Schedule E** - *Income – Gifts – Travel Payments* – schedule attached

-or-

☐ **None** - *No reportable interests on any schedule*

5. Verification

MAILING ADDRESS STREET CITY STATE ZIP CODE
(Business or Agency Address Recommended - Public Document)

DAYTIME TELEPHONE NUMBER ( ) — E-MAIL ADDRESS

I have used all reasonable diligence in preparing this statement. I have reviewed this statement and to the best of my knowledge the information contained herein and in any attached schedules is true and complete. I acknowledge this is a public document.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date Signed _____ *(month, day, year)*

Signature _____ *(File the originally signed statement with your filing official.)*

CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
200 East Santa Clara Street, Wing
San José, California 95113
Telephone 1 (408) 535-1261
FAX 1 (408) 292-6207

FAMILY GIFT REPORTING FORM

Pursuant to the City's Gift Ordinance, Chapter 12.08 of the San Jose Municipal Code, all consultants, contract employees, officers and designated employees of the City and its Redevelopment Agency must file this form with the City or Agency, together with the annual Statement of Economic Interests (Form 700).

You must list below any reportable gifts known to have been accepted by your domestic partner, spouse and any dependent child (Section 12.08.050) during the previous calendar year. Gifts that must be reported are those that would be prohibited had they been given to you. Refer to Section 12.08.010 and 12.08.020 to determine whether a particular gift must be reported. Section 12.08.030 lists the gifts that are not prohibited and do not need to be reported.

PLEASE TYPE OR PRINT IN INK

Name of Filer _____ Phone _____

Name of Agency _____

CHECK APPROPRIATE ITEM

- ☐ I do not have a spouse, domestic partner or any dependent children.
- ☐ I have no knowledge that my spouse, domestic partner or any dependent child has received a reportable gift.
- ☐ My spouse, domestic partner or dependent children have, to my knowledge, received the following gifts:

PLEASE LIST EACH GIFT SEPARATELY

DATE	RECIPIENT (Spouse/Domestic Partner/Child)	GIFT	DONOR	VALUE

VERIFICATION

I have used all reasonable diligence in preparing this form, and to the best of my knowledge the information contained herein is true and complete.

I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on _____, at _____.
(Date) (City, State)

_____
(Signature)

(Rev. 2/05)

CITY OF SAN JOSE
CAPITAL OF SILICON VALLEY

Memorandum

TO: HONORABLE MAYOR AND CITY COUNCIL

FROM: DENNIS HAWKINS, CMC

SUBJECT: RESPONSE TO THE CITY AUDITOR'S REPORT ON FORM 700 FILERS

DATE: November 9, 2011

This memorandum is in response to the City Auditor's report on the Audit of Form 700 Filers. The City Clerk's Office has reviewed the final draft report and is general agreement with the recommendations identified in the report. Of the 1,066 individuals required to file the Annual Form 700, the City of San José has a 99% compliance rate. As of July 20, 2011, only 12 employees had not complied with their reporting requirements. As of today's date, all current designated employees have submitted their Form 700. The audit also takes into consideration the Family Gift Reporting Form which is a local requirement and is not mandated by the State.

The Auditor's report has one finding: "Most Form 700 Filers have filed as required, but there is room for improvement." To this finding, we agree. There is always room for improvement and the Office of the City Clerk has an ongoing commitment to continuous improvement efforts. The City Clerk's office works to streamline the process every year, and will be looking at internal processes, staff assignments, and other electronic filing systems in the future to ensure the most efficient processing system is utilized.

In May 2005, the City of San José entered into a contract with West Coast On-line (DBA NetFile) to host the City's web posting of campaign finance disclosure, lobbyist, and statement of economic interest reports. In 2009, the ability of all officials and designated employees, commissioners, and consultants to file electronically using NetFile became available. NetFile allows a filer to complete the information online; however, under State regulations, a hard copy with original signature is still required to be filed with the City Clerk.

Recommendation #1 During each reporting cycle, the City Clerk should notify the City Manager and department heads of non-filers in their departments and should impose penalties on late and non-filers. Furthermore, the City Manager and department heads should consider disciplinary action on designated City employees who file untimely or not at all.

On recommendation by the City Clerk and City Attorney, the resolution for the City's Conflict of Interest Code adopted by the City Council now includes the provision that employees who fail to comply with their filing obligations may be subject to disciplinary action. The City Clerk's office will begin notifying department heads of those employees who fail to file their Form 700 by the due date. Each compliance notice sent to a late filer will be copied to the Department

Director or Council Appointee. Notification of the appropriate appointing authority and department of any employee who has failed to comply will enable management to determine whether to pursue disciplinary action on any employee who fails to file.

Pursuant to Government Code Section 91013, any person who files a Form 700 after the April 1st deadline is liable for a late fine of $10/day up to $100. The City Clerk's office has not imposed such fines in the past, but based on recent clarifications to the Government Code, the City Clerk will begin imposing the late fines.

Recommendation #2: The City Attorney's Office should provide standard templates and instructions to department and Purchasing staff to facilitate the identification of consultants who should be Form 700 filers. In addition, the department should notify the City Clerk in cases where a contract terminates early or the designated consultant's Assigned Employee(s) change.

The City Clerk's office agrees with this recommendation and is working with the Office of the City Attorney to develop a consistent approach to consultant agreements. In addition, the Office of the City Clerk will work with the City Administration to develop and implement a consistent and efficient way to identify and track consultants and their assigned employees who should be filing a Form 700 to ensure compliance.

Recommendation #3: To ensure designated consultant firms' Assigned Employees file their Form 700s timely,
(a) the City Clerk should require such firms to coordinate and file assuming office statements for their assigned employees upon the commencement of work, and
(b) the City Clerk should annually notify those firms whose contracts are still valid of the requirement for their Assigned Employees to file the Annual Form 700.

The City Clerk's office believes that if Recommendation #2 were to be implemented, Recommendation #3 would be easier to accomplish. The City Clerk's office will create a template letter to consultants asking them to identify their assigned employees and informing them of their legal obligation to file the Form 700.

Recommendation #4: The City should seek to amend current legislation to allow the City to participate in the State's electronic filing pilot program.

The City Clerk's office supports this recommendation and will propose that this be one of the City's legislative priorities in 2012. Locally, the County of Santa Clara participates in the electronic filing of Form 700's. The only city who participates in the electronic filing pilot program is the City of Long Beach, which with a total of 1,178 filers including employees, consultants and boards & commission members, is similar in size and scope to San José. The fact that on-line filing has been available for San José filers since 2009, and that electronic filing has been embraced by a significant number of filers, provides a strong argument for San José's inclusion in the statewide pilot.

Recommendation #5: Include information about Form 700 filing requirements in new employee orientation materials and employee exit checklists, as appropriate.

The City Clerk's office supports this recommendation. The City Clerk has an established process for obtaining assuming and leaving office statements from new and exiting Council staff. This process could be easily expanded to all City employees. The City Clerk's office would like to coordinate with the City Administration, especially the Human Resources and Retirement Services Departments, on implementing city-wide procedures to satisfy this recommendation.

SUMMARY:

The Office of the City Clerk appreciates the efforts of the City Auditor and her staff in the audit process. We also thank the City Manager's Office and the City Attorney's Office for their collaboration in this effort and the cooperation extended by departmental staff from throughout the City who help us throughout the year in the Form 700 process. Lastly, I would like to acknowledge the exemplary efforts of two colleagues – Lupe Nieto, Analyst/Deputy City Clerk, and Nora Pimentel, Staff Technician/Senior Deputy City Clerk – for their daily efforts to handle the myriad of details required to obtain the level of compliance that we have achieved and their commitment to continuously working to improve our system and processes for greater efficiency.

Dennis Hawkins

DENNIS D. HAWKINS, CMC
City Clerk