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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: May 3, 2010
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director
Steven Massey, Information Technology Officer
Re: Possible actions related to electronic filing of Statements of Economic Interests

As you know, City elected officials, department heads and appointed members of boards and commissions must file Statements of Economic Interests (“SEIs”) with the Ethics Commission. SEIs, also called the Form 700s, must be filed annually and within 30 days of assuming or leaving office. Currently, State law requires all City officials to file hard copies of SEIs with an original (“wet”) signature, and the Ethics Commission allows filers to file supplemental electronic copies as well. Although eliminating the “wet” signature requirement would be more convenient for many filers and would save the Commission thousands of dollars in currently wasted resources, State law currently does not allow it.

Staff requests that the Commission authorize it to take steps to transition to all electronic filing and to eliminate the paper filing requirement. Part A of this memorandum provides general background about the law that requires SEI filing. Part B provides additional information on staff’s processing of SEIs filed at the Commission. Part C discusses the pilot program established under State law that allows for the electronic filing of SEIs. Part D sets forth staff recommendations, with decision points for the Commission to consider.

A. General Background Regarding SEI Filing

Under State law, every local agency must adopt a conflict of interest code that enumerates the positions that make or participate in making government decisions. Individuals in these enumerated positions, also referred to as Code filers, must file SEIs to disclose publicly their personal assets and income. Most of the City’s Code filers are employees who must file SEIs directly with their departments, not with the Ethics Commission. The Commission receives SEIs only from City officers – generally, department heads and members of boards and commissions. Aside from local conflict of interest codes, State law also provides that certain officials – called “section 87200 filers” after the section of the Government Code that applies to them – must file SEIs as

well. In San Francisco, the “section 87200 filers” are members of the Board of Supervisors, the District Attorney, Mayor, City Attorney, Treasurer, members of the Planning Commission, and other public officials who manage public investments. These individuals must file SEIs with the Ethics Commission, which retains a copy and forwards the original to the California Fair Political Practices Commission (“FPPC”).

SEIs are public documents, so any member of the public can inspect or copy any statement. To facilitate public access, staff uploads all SEIs filed with the Commission onto the Commission’s website via the Commission’s Electronic Disclosure System (“SFEDS”). Staff generally redacts signatures, addresses and telephone numbers of the filers before posting the SEIs online. The labor cost of making the paper-filed SEI forms accessible to the public on the Internet is becoming increasingly burdensome for the Commission.

As of April 29, the Commission received 563 SEIs for the 2009 reporting period. As required by State law, every filer submitted a hard copy with an original signature, but 14 filers also submitted electronic copies through the Commission’s Netfile system. One significant reason that so few filers file electronically is that the FPPC requires original signatures on the SEI form; thus, electronic filing is voluntary and filers who file electronically must still submit a hard copy with an original signature to the Commission.

B. Staff’s processing of SEIs received at the Ethics Commission

1. The paper SEI process

Making a paper-filed SEI and the data for a filer/non-filer list accessible to the public on the Commission’s web site is a labor-intensive process. When the Commission receives paper-filed SEI filings, staff must take all of the following steps:

1. Create an account for new filers in the Ethics Commission’s SEI system and establish the correct required deadlines for the filer;
2. Receive the form via mail or in person at the Commission’s office and complete a facial audit of the form to verify the form is completed correctly and accurately;
3. Follow up with filers who did not complete the form correctly;
4. Enter the filer’s name, date filed, statement type, reporting period, and deadline date from the form into an electronic database to confirm receipt;
5. Scan the form into electronic format and appropriately file the electronic document;
6. Create a second copy of the electronic document and redact particular fields including street addresses and telephone number;
7. Upload the unredacted electronic document to an internal database and the redacted copy to a database accessible from the Commission’s web site for public access; and
8. File the original signed document into appropriately-labeled file folders.

From January 1 to April 29, staff spent a total of 236 hours to create accounts, conduct facial audit, process, record, scan, upload and redact the filings onto SFEDSs. It took an average of 25 minutes to process each paper filing.

2. The electronic-plus-paper SEI process

As noted above, City officials have the option of filing their SEIs electronically in addition to the required paper filing. When officials choose this option, the burden on staff is much less. SEIs that are filed electronically with the Commission are automatically processed and made available to the public through SFEDS, which automatically posts the filings on the Commission's web site every 24 hours. When the Commission receives electronic SEI filings, staff must take the following steps:

1. Create an account for new filers in the Ethics Commission's SEI system and establish the correct required deadlines for the filer;
2. Enter a confirmation number found on the paper print-out of the electronically-filed SEI filing into a database to verify receipt; and
3. File the original signed document into appropriately-labeled file folders.

It took an average of two minutes to process each e-filing.

Staff need not complete a facial audit on these filings because the electronic system validates required fields during electronic submission. The electronic system automatically creates the unredacted electronic document to record into the Commission's internal database and makes a redacted copy accessible on the Commission's web site. However, the filer is still burdened with printing the electronically filed SEI, signing the form, and delivering it to the Ethics Commission. Some filers have expressed to staff that the paper filing requirement eliminates the incentive to file electronically.

3. The electronic SEI process

In further contrast, if there were no paper filing requirement, processing an SEI filing would be reduced to a single-step of establishing a new filer's required filing deadlines in an electronic account. This could be accomplished prior to the filing deadline, making staff available to assist filers with questions that arise concerning completing the contents of the form. Electronic filing reduces human error, saves paper, and promotes efficiency and cost reduction. It also eliminates the paper processing by staff.

C. The electronic SEI pilot project

Under state law, since January 1, 2009, four counties (Los Angeles, Orange, Stanislaus and Merced) have been authorized to participate in a pilot program that permits the electronic filing of SEIs without a paper filing requirement. *See* Gov't Code § 87500.1. Two of the participating counties, Los Angeles and Orange, have adopted systems for electronic filing, but Stanislaus and Merced counties have not been able to devote resources to the adoption of an electronic filing system. The pilot program covers SEIs for the reporting periods of 2008 through 2011. On February 10, 2010, Assembly Member Davis, author of the legislation that created the pilot program, introduced new legislation (AB 1921) that would permit three additional jurisdictions – Santa Clara County, Ventura County and the City of Long Beach – to participate in the e-filing program.

Staff spoke with Los Angeles and Orange Counties about their experiences with electronic filing of SEIs. Both Don Garcia, Chief of Conflict of Interests, Lobbyist Division, for Los Angeles County, and Darlene Bloom, Clerk of the Board for Orange County, were very enthusiastic about the e-filing of SEIs, and do not envision returning to paper filings after the pilot program sunsets. Los Angeles internally developed its e-filing software system, and Orange County uses SouthTech Systems of Riverside. Both systems are capable of automatically tracking filers and notifying them of the annual filing due date. They also issue non-filing notices via email to non-filers. Under current law, electronic filing in the pilot program is voluntary, and electronically filed SEIs may not be not posted online; instead, they are viewable on kiosks or printed in hard-copy for anyone who wishes to view them.

Both Garcia and Bloom spoke highly about the efficiencies achieved by electronic filing – the databases are cleaner than with paper filing; there is greater accuracy in the filings; information on the forms is populated from one year to the next, which saves time for the filer; filers can access the system 24/7; office holders who serve on multiple boards can have their forms filed all at once. There is also tremendous savings in paper. Bloom stated that what used to take several staff persons to track has now been reduced to one staff person.

Beyond the pilot project, 14 California jurisdictions, including the Commission, have contracted with Netfile to facilitate voluntary e-filing of SEIs to supplement hard copy files. Netfile’s SEI system is comparable to the systems used in the pilot project. But unlike the pilot program participants, officials who electronically file their SEIs with the Commission must also file their SEIs in paper form.

Staff is convinced that efficiencies can be achieved by the electronic filing of SEIs. Staff also believes that paper SEIs with wet signatures are no longer necessary: with the Netfile system, each filer is assigned a unique identification and password, thereby providing secure access to his or her filings. In typing his or her name and hitting the “submit” button, the filer certifies that he or she is filing under penalty of perjury under the laws of the State of California that the information provided is true and correct, just like a paper filing. The electronic filing means that the filer no longer needs to print out a copy of his or her report, sign it and send or deliver it to the Commission. In other words, the filer saves paper as well as time and postage. At the same time, a member of the public may view the redacted SEI from home over the Internet, or the unredacted SEI in a kiosk at the Commission and may receive a copy of the SEI by hitting the “print” button. An agency no longer needs to house paper SEIs, thereby saving space and storage costs.

D. Staff’s recommendations

Based on the above factors, staff recommends that the Commission consider taking the following steps:

1. Communicate with the Mayor's Office, the City's State Legislation Committee and any other appropriate City agency to encourage the adoption of state legislation:
 - a) to permit local jurisdictions with SEI filing officer duties to establish electronic filing systems for the filing of SEIs so that paper forms can be eliminated;
 - b) to permit local jurisdictions to decide whether to require the electronic filing of SEIs by specific or all SEI filers, including section 87200 filers; and
 - c) to permit local jurisdictions to post e-filed SEIs online.
2. Communicate with the FPPC to encourage the same reforms.

1. Support changes to state law to permit local jurisdictions to adopt electronic filing

Staff recommends that the Commission authorize the Executive Director to contact the Mayor's Office, the State Legislation Committee, and other City agencies to support efforts to amend state law to permit filing officers of local jurisdictions to adopt electronic filing systems for the filing of SEIs.

Decision Point 1a:

Shall the Commission authorize the Executive Director to contact the Mayor's Office and others to support efforts to amend state law to permit filing officers in local jurisdictions to adopt electronic filing without a paper filing requirement for the filing of Statements of Economic Interests?

Staff further recommends that the Commission support legislation to permit local jurisdictions to require specific or all Code and section 87200 filers to file electronically. As discussed above, staff believes that on-line filing is efficient, lessens human error, and saves staff time. While education and outreach work to some extent to convince filers to file electronically, it is more likely that there will be greater electronic filing if it is mandated by law.¹ Because the Commission serves as filing officer for some but not all Code filers, staff is not recommending that all Code filers listed in the San Francisco Conflict of Interest Code be required to file electronically. Whether designated employees who file with City departments should be required to file electronically would depend a great deal upon the resources of the departments. However, with respect to section 87200 filers, current state law prohibits any such filers from participating in the pilot electronic filing programs. Staff believes that section 87200 filers should be treated like other Code filers who file with the Ethics Commission. Thus, should local jurisdictions be given the authority to require electronic filing of SEIs, staff will recommend that any proposed legislation to be considered by the Ethics Commission requiring electronic filing should include both Code and section 87200 filers who now file with the Commission. For these reasons, staff recommends that the Commission authorize the Executive Director to contact the Mayor's Office and others to support the adoption of state legislation that would permit a filing

¹ The City Clerk of the City of San Diego, which is under contract with Netfile to provide e-filing and which serves as filing officer for 1700 annual filers, informed staff that 535 filers filed electronically in the third year during which electronic filing became available. She speculated that less than one-third of filers file electronically because, in addition to the wet signature requirement, electronic filing is not mandated .

officer jurisdiction such as San Francisco to require some or all of its SEI filers, including section 87200 filers, to file their SEIs electronically.

Decision Point 1b:

Shall the Commission authorize the Executive Director to contact the Mayor's Office and others to support amendments that would permit a filing officer to require the electronic filing of SEIs from specific or all SEI filers, including section 87200 filers?

In addition, staff recommends that the Commission support legislation to permit local jurisdictions to post SEIs on-line. While San Francisco currently posts all SEIs that it receives on-line, the state law authorizing the pilot program prohibits the on-line posting of SEIs, generally because of confidentiality concerns about the filer. The Commission has addressed these issues by redacting information such as the filer's signature, address and telephone numbers so that they do not appear on the website; however, such information is readily available by viewing the filings on the kiosk at the office or by viewing paper documents filed at the Commission. Staff believes that on-line filing makes information more readily accessible to persons who are interested in seeing the financial interests of those who are making or participating in the making of decisions for the City.

On April 29, 2010, the FPPC issued a press release stating that it began to post on its website the SEIs of California's elected officials. Initially, the SEIs of constitutional officers, the insurance commissioner, legislators and county supervisors will be available, with the ultimate goal of including all elected officials within the state that file their SEIs with the FPPC. Due to privacy concerns, the SEIs posted on the FPPC website at www.fppc.ca.gov will have the address, telephone and signature blocks redacted.

Decision Point 1c:

Shall the Commission authorize the Executive Director to contact the Mayor's Office and others to support amendments to state law to permit jurisdictions that require or permit the electronic filing of SEIs to determine whether to post SEIs on the website, with redactions as appropriate?

2. Communicating with the FPPC

In addition to the above steps, or if the Commission does not wish to pursue the steps outlined above, staff recommends that it authorize the Executive Director to contact the FPPC to express the recommendations discussed in this memo. The FPPC is the state agency that is responsible for issuing the SEI form and interpreting the Political Reform Act.

In this time of budget cutbacks and the broadening use of the web to access information, a letter from the Commission to the FPPC encouraging e-filing may be influential. While the FPPC may not be able to take action on this question in the immediate future without specific legislative authority, having the Commission's position on record is important in any future decisions.

Decision Point 2:

Shall the Commission send a letter to the FPPC urging it to take steps to embrace the electronic filing of SEIs without the need for paper copies?

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