

ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

PAUL A. RENNE
CHAIRPERSON

BRETT ANDREWS
VICE-CHAIRPERSON

BEVERLY HAYON
COMMISSIONER

BENEDICT Y. HUR
COMMISSIONER

PETER KEANE
COMMISSIONER

JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: June 24, 2015

To: Members, Ethics Commission

From: John St. Croix, Executive Director
By: Jesse Mainardi, Deputy Executive Director

Re: Adoption of Proposed Regulations Implementing Electronic Filing of Statements of Economic Interests for All City Employees

Proposed Commission Action and Staff Recommendation

Staff recommends that the Commission approve the adoption and amendment of the regulations discussed below, which impose electronic filing and website posting requirements for all City employees who file Statements of Economic Interests (FPPC Form 700) pursuant to the City's conflict of interest code.

Background and Reasons for Proposed Regulatory Action

Certain City officers and employees are required to disclose financial interests on a Statement of Economic Interests (Form 700) on an annual basis, as well as upon assuming or leaving office. Reportable financial interests include sources of income, real property, and ownership interests in business entities.

In 2014, the Commission implemented mandatory electronic filing of the Form 700 for elected officials, department heads, and members of boards and commissions. The Commission makes these electronically filed Form 700s available on its web site immediately upon filing. Some personal information is currently redacted from the online Form 700s,¹ although members of the public are also able to access unredacted reports at the public computer kiosk in the Commission's office and through Sunshine Ordinance requests. The response from filers and the public has been generally positive.

The proposed regulatory amendments represent a continuation of the Commission's efforts in this regard, and expand the mandatory electronic filing requirement to cover all City employees who file a Form 700. The amendments would

¹ The redacted information includes phone numbers, emails, names of sources of rental income, and street address information other than for economic interests that are real property interests.

also make all Form 700s filed by the additional City employees -- which we understand number approximately 3,200 -- available online.

Currently, the Form 700s completed by these employees are filed with those employees' departments. Typically, each department designates its own "filing officer" to collect these Form 700s, and the Form 700s are neither forwarded to the Ethics Commission nor posted online. A member of the public who wishes to view a Form 700 filed by a designated employee must either submit a public records request or otherwise make arrangements to view the form at the relevant department.

The overall purpose of this effort is to improve transparency. In this regard, it is consistent with developments at the state level. The budget subcommittees for the state Assembly and Senate recently approved additional funding for the Fair Political Practices Commission ("FPPC") for use in building its own electronic Form 700 filing system. The project currently before the Commission is estimated to cost approximately \$40,000 per year. The Commission will have to seek additional budgetary funding beyond the next fiscal year.

Staff held one interested persons meeting on this issue (which is summarized in Attachment A), and solicited comments from the City's 60 or so filing officers. Staff has already been working with these filing officers to prepare them and their employees for the expansion. Staff also plans an extensive outreach project over the next year.

Also, the Department of Human Resources notified all City unions of the proposed changes and held a "meet and discuss" conference with staff and a representative from one City union, who requested the conference and expressed certain concerns regarding the proposal's implications for City employees' privacy interests. Those concerns are discussed below.

Regulatory Proposals

1. Regulation 3.1-102-1.

This amendment requires all City "designated employees" who file a Form 700 – specifically, City employees who are not elected officials, department heads, and members of boards and commissions – to file electronically. The City's conflict of interest code, which is found in Article I, Chapter 3 of the Campaign and Governmental Conduct Code, lists these designated employees. Persons identified as designated employees are often managers in City departments or others with decision-making responsibilities. Under the proposed amendment, all designated employees would for the first time have to file electronically.

Under this proposal, a designated employee's department head or the executive director of his or her agency will remain the employee's filing officer, and thus will be responsible for instructing agency employees on electronic filing procedures, monitoring whether all required reports have been filed, and following up with non-filers. (*See* Cal. Govt. Code section 81010.)

The proposed regulation does not impose electronic filing requirements on persons listed in the City's conflict of interest code who do not work for a City agency.² Instead, staff proposes that the Commission phase in these filers at a future date as the next step in the process of moving entirely to electronic filing.

Staff makes this proposal for three reasons. First, it will allow further outreach to the affected employees of non-City agencies.³ Second, it will allow staff to further review any legal issues associated with imposing electronic filing requirements on designated employees of these non-City agencies.⁴ Third, it will ease the transition somewhat for staff as there will be approximately 500 fewer filers who might need technical assistance during the first year of the proposed expansion of electronic filing requirements.

The proposed regulatory language follows:

Regulation ~~3.1-103-1~~ 3.1-102-1.⁵

Effective January 1, ~~2014~~ 2016, all persons *listed in Section 3.1-103(a) and (b) holding a position designated in Chapter Three of Article One of the Campaign and Governmental Conduct Code, other than designated employees who do not work for the City and County of San Francisco*, shall file assuming office, annual and leaving office Form 700 Statements of Economic Interests ~~with the Ethics Commission~~ in an electronic format prescribed by the Ethics Commission.

2. Regulation 3.1-102-2.

This amendment requires all new electronic filers to provide information necessary to set up an account for filing the Form 700. This information, which must be provided to the filing officer, includes an email address and contact information, which is already provided by current electronic filers. The filing officer must then provide that information to the Commission staff for help in setting up the required e-filing accounts. Any subsequent account changes will be handled by the filing officers.

The proposed regulatory language follows:

Regulation ~~3.1-103-2~~ 3.1-102-2.

² These agencies include the Community College District, Health Authority, the Housing Authority, the Law Library, and the San Francisco Unified School District. Briefly, these agencies are included in the City's conflict of interest code because the Board of Supervisors is designated as their "code reviewing body" by virtue of the fact that they are located entirely within the City's geographic area. (See Cal. Govt. Code §§ 82011(b), 87303.)

³ Staff spoke with representatives of the non-City agencies, some of whom were generally willing to defer to the City on this issue. However, staff understands that the affected employees (and their unions) were not consulted.

⁴ Staff has discussed this issue with both the City Attorney's office and the FPPC, and has not identified any legal obstacle to imposing electronic filing requirements on designated employees of these non-City agencies, but staff would ideally like additional time to consider this issue.

⁵ Staff proposes renumbering the current regulations to better reflect the appropriate statutory authority.

(a) All persons listed in Section 3.1-103(a) and (b) of the Campaign and Governmental Conduct Code shall provide to the Ethics Commission a working and unique email address, in addition to a mailing address and telephone number and any other information required by the Ethics Commission consistent with the purposes and provisions of the Conflict of Interest Code. The email address shall be a personal or business email address, which may be a City email address. All such persons shall inform the Ethics Commission within 15 calendar days whenever a change is made to the email address, mailing address, or telephone number provided. All such persons shall provide their email addresses, mailing address, and telephone number under this regulation within 15 calendar days of assuming office ~~or by January 1, 2014,~~ whichever is later.

(b) No later than September 15, 2015, all City designated employees shall provide to their respective filing officers an email address, a mailing address, a telephone number, and any other information required by the Ethics Commission consistent with the purposes and provisions of the Conflict of Interest Code. The filing officer shall then provide this information to the Ethics Commission by no later than September 25, 2015.

(c) After September 15, 2015, all City designated employees shall provide the information listed in subsection (b) to their filing officer within 15 calendar days of assuming office. The filing officer shall then provide this information to the Ethics Commission within 5 calendar days of receipt.

(d) After September 15, 2015, all City designated employees shall inform their respective filing officers within 15 calendar days whenever a change is made to their email address, mailing address, or telephone number previously provided to their department filing officers. The filing officer shall then provide this information to the Ethics Commission within 5 calendar days of receipt.

3. Regulation 3.1-102-3.

This amendment allows the new filers to request a waiver from the electronic filing requirement, just like the current electronic filers. (A scanned copy of a paper Form 700 will still be posted online for any person receiving a waiver.) Four such waivers have been requested to date. The Executive Director denied all four requests.

The proposed regulation defines the types of compelling circumstances that would justify a waiver, including a demonstrated disability impacting the ability to file electronically or an unavoidable lack of access to technology at or near the filing deadline. It also indicates that the Executive Director must report to the Commission regarding his or her decision to grant a waiver request.

The proposed regulatory language follows:

Regulation ~~3.1-103-3~~ 3.1-102-3.

(a) A person required to file a Form 700 Statements of Economic Interests in electronic format may make a written request to the Executive Director of the Ethics Commission to seek permission to file an original paper copy instead of filing in electronic format. The person must submit the request at least 15 calendar days prior to the deadline for filing the Form 700 Statement of Economic Interests, and the request must provide the compelling reasons why the request should be granted. The Executive Director may grant or deny the request in his or her discretion, but must report to the Commission regarding each decision to grant such a waiver request.

(b) For purposes of this regulation, compelling reasons include a demonstrated mental or physical disability or condition that prevents the filer from filing electronically; an unavoidable lack of online access at or near the filing deadline; or similarly serious reasons. Compelling reasons do not include a mere preference not to file electronically; an existing lack of online access at the filer's home or office; an unjustified refusal to comply with the Commission's set-up procedures; or similarly general objections to Commission's Form 700 filing requirements.

4. Regulation 3.1-102-4.

The Commission currently posts electronically-filed Form 700s on its website. This regulation would codify that practice as well as require posting of paper copies filed pursuant to a Commission waiver. However, certain persons have expressed concern that the financial and address information of lower level City employees, such as the address of a spouse's workplace, will be so readily available online.

Among others, the union representative attending the "meet and discuss" conference facilitated by the Department of Human Resources expressed this concern. That representative distinguished these lower level employees from elected officials, board members and department heads who might reasonably expect the wide public dissemination of their (and their spouse's) financial information.

In this regard, staff understands that only twenty-nine (29) of the fifty-three (53) jurisdictions that use Netfile for Form 700 filing post some or all of the forms online. (As discussed below, certain information is redacted from those forms.) Of those that do post them online, eight (8) only post filings for higher-level (e.g., elected) officials. In sum, only twenty-one (21) of the fifty-three (53) jurisdictions using Netfile currently choose to make all of the filed Form 700s available online.

If the Commission finds these privacy concerns compelling, it has a few options. First, it might decide not to require Form 700s filed by City employees to be posted on its website at all. Second, as set forth in proposed subsection (b), it could allow a filer to request that the Ethics Commission not post his or her filing to the website in the first instance, or take it down after the fact, due to compelling reasons (e.g., harassment of the filer or a family member, etc.). Under the proposed language, the Executive Director may grant or deny any such request but must report to the Commission any decision to grant a request.

Also, as set forth in proposed subsection (c), the Commission could require the automatic redaction of certain information, including signatures, phone numbers, emails, names of sources of rental income from properties, and street address information other than for economic interests that are real property interests. This is the current practice and is consistent with the policy that Netfile applies statewide.

By way of comparison, the FPPC has enacted two regulations providing for the redaction of information on the *paper* copies of Form 700s *filed with the FPPC*, which the agency posts on its website. The first regulation requires the redaction of the signature, address, and phone number of the filer. The second regulation allows for the redaction of certain personal information if the filer “has a reasonable privacy concern related to an individual’s address, or a family member’s name or other personally identifiable information.”⁶ (2 Cal. Code of Regs. §§ 18313.5 & 18313.6, attached.)⁷ The Commission may also want to consider the standard set forth in the second regulation if it prefers one that is broader than the one proposed by staff.

The proposed regulatory language follows:

Regulation 3.1-102-4.

(a) The Ethics Commission shall post on its website all assuming office, annual and leaving office Form 700 Statements of Economic Interests filed electronically after January 1, 2016. The Commission shall also post on its website all Form 700 Statements of Economic Interests filed on paper pursuant to Regulation 3.1-102-3.

⁶ Per the FPPC regulation, “personally identifiable information” includes: (1) the address of the individual; (2) the name of the family member; (3) the address of an entity at which the family member is employed; and (4) the name of any entity if the name of the entity would reveal the name of the family member or the address at which the family member lives or is employed.

⁷ State law also provides that the FPPC may adopt regulations to require a local agency to redact information on a Form 700 prior to posting it online. (Cal. Govt. Code § 87500.2(e).) The proposed language requires compliance with any future FPPC regulation.

(b) A person required to file a Form 700 Statement of Economic Interests may request that the Commission not post the Form 700 on its website or that the Commission remove a Form 700 from its website. The request must be in writing, sent to the Executive Director, and provide the compelling reasons why the request should be granted. The Executive Director may grant or deny the request in his or her discretion, but must report to the Commission regarding each decision to grant such a request.

(c) For all Form 700 Statements of Economic Interests filed on or after January 1, 2016, the Ethics Commission shall redact from Form 700 Statements of Economic Interests posted online all signatures, phone numbers, email addresses, names of sources of rental income for real property, and street address information other than for reported real property interests. Notwithstanding the foregoing, the Ethics Commission shall comply with any regulations enacted by the Fair Political Practices Commission for local agencies concerning the redaction of information on a Form 700 Statements of Economic Interest for statements filed on or after such enactment.

(d) For purposes of this regulation, compelling reasons include a demonstrated risk of verbal or physical harassment to the filer or a family member of the filer; a demonstrated risk of physical, psychological or financial harm to the filer or a family member of the filer (other than financial harm arising in connection with actual or potential litigation); or similarly serious reasons. Compelling reasons do not include a mere preference not to have a Form 700 posted online or similar general objections to Commission's Form 700 filing requirements and posting procedures.

5. Regulation 3.242-1.

Commission staff refers Form 700 reporting violations to the FPPC for enforcement per FPPC advice. (See FPPC Advice Letter to Daniel D. Purnell (6/20/00) No. A-00-098.) However, the FPPC has also indicated that it will not enforce the City's electronic filing requirements. Thus, this regulation specifies that the District Attorney, the City Attorney, and Commission may enforce those requirements. In other words, a failure to file at all will still be referred to the FPPC; however, persons submitting their Form 700 in paper format to their filing officer (i.e., not electronically) may be fined by the Commission, absent the granting of a waiver.

The proposed regulatory language follows:

Regulation 3.242-1

The Ethics Commission, City Attorney, and District Attorney may impose the administrative, civil, and criminal penalties set forth in Campaign and Governmental Conduct Code section 3.242 on any person who fails to file or fails to timely file an assuming office, annual and leaving office Form 700 Statement of Economic Interests in the electronic format prescribed by the Ethics Commission. In addition to those administrative penalties, the Ethics Commission may also issue warning letters.

Attachment A

Form 700 Electronic Filing – Summary of IP Meeting Comments (5/13/15)

Ethics Commission staff held an interested persons meeting on May 13, 2015 to discuss its proposed regulations, which impose electronic filing requirements for all City employees who file Statements of Economic Interests (FPPC Form 700).

The meeting was attended by two filing officers and two members of the public, as well as three staff members and a DCA. (Another filing officer wrote in, and was generally supportive of the effort, but requested that the system is simplified.)

The attendees were generally supportive of requiring electronic filing and of posting Form 700s on the Commission's website. One filing officer thought it would simplify the filing process, while another thought that it would be additional work for her. Most of the discussion concerned the four issues below:

1. Non-City filers. Staff's original draft regulations did not require electronic filing by employees of non-City agencies who are nevertheless designated as filers in the City's conflict of interest code. Examples include designated employees of the Successor Agency to the Redevelopment Authority, the Community College District, San Francisco Unified School District, the Health Authority, the Law Library, and the Housing Authority. One member of the public stated that these employees should file electronically. Staff's memorandum addresses this issue.

2. Privacy/Redaction Issues. There were concerns about privacy: namely, that employees' personal information (particularly information related to spouses and tenants) would be so freely available online. While there was agreement that Form 700s should not be posted when there are demonstrated compelling reasons (but see number 3 below), there was less consensus on what (and whether) information should be redacted from Form 700s posted online.

Information	Group Comments
Filer's street address	Most did not object to redaction.
Filer's phone number	One member of the public objected to redaction because phone numbers might allow the public to connect various reported entities.
Filer's email address	Most did not object to redaction.
Street address information for economic interests (other than real property)	One member of the public objected to redaction, particularly for addresses of business which could potentially be impacted by governmental decisions.
Names of sources of rental income	The group agreed that these name should be redacted given the renter's privacy interests.

In short, staff still believes that that Netfile's default redaction of the information above is appropriate.

3. Waiver requests. The original draft regulations allowed a filer to obtain a waiver from the electronic filing requirement (and thus not have his or her information posted online), and to have the Ethics Commission take down a Form 700 that has been posted online. In each case, the filer must provide compelling reasons for his or her request.

Two members of the public requested that the regulations further define what constitutes a "compelling reason." One attendee suggested defining it as a demonstrated risk of harm or harassment to the filer or another, while another suggested that it merely be a situation that distinguishes the filer from other filers. Staff agrees with the general suggestion, and has included a draft definition in the proposed regulation.

Also, the original draft regulations required approval from the Ethics Commission Executive Director and the filing officer for a waiver from the filing requirement, but only approval from the Executive Director to take down a Form 700 posted online. One member of the public asked whether the filing office should also approve a request to take down a Form 700 posted online, while another thought that the Commission should make this decision.

Staff believes that a Commission decision would likely take too long to effectively address filer concerns and that the definition of "compelling reasons" will ensure that waivers are appropriately granted.

4. Enforcement. One member of the public strongly objected to the ability of the Commission to enforce electronic filing requirements for Form 700s. He stated that state law allows the City to permit electronic filing, but does not allow the City to require electronic filing. However, staff understands that the Commission does in fact have the ability to impose and enforce electronic filing requirements for Form 700s.

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18313.5. Online Posting.

(a) Not later than 10 days after issuance or receipt by the Commission, the Commission shall post the following information on its website:

(1) Commission opinions issued pursuant to subdivision (a) of Section 83114.

(2) Staff advice letters issued pursuant to subdivision (b) of Section 83114.

(3) Warning, advisory, and closure letters issued by the Enforcement Division.

(4) Behested payments reports filed with the Commission pursuant to subdivision (b)(2)(B)(iii) and (b)(3) of Section 82015.

(b) The Commission shall also post on its website all statements of economic interests required to be filed with the Commission on or after January 1, 2010, by elected officers in their elected capacity. The address, telephone number, and signature block of the elected official's statement will be redacted from the cover page of the document before posting to the website. The statement of economic interests will be posted as soon as possible after the document is filed with the Commission.

(c) The information required to be posted on the Commission's website under subdivisions (a) and (b) shall remain posted on the website until the members of the Commission approve its removal.

Note: Authority cited: Section 83112, Government Code. Reference: Section 81002 and 83113, Government Code.

HISTORY

1. New section filed 6-17-2010; operative 7-17-2010. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2010, No. 25).
2. Change without regulatory effect amending subsection (c) filed 7-8-2010 pursuant to section 100, title 1, California Code of Regulations (Register 2010, No. 28).

(Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of Regulations)

§ 18313.6. Online Posting: Redacting Personal Information.

(a) At the request of an elected officer, Commission Staff shall redact the following information from the official's statement of economic interest for purposes of the online posting under Regulation 18313.5(b) if the elected officer has a reasonable privacy concern related to an individual's address, or a family member's name or other personally identifiable information:

(1) The address of the individual.

(2) The name of the family member.

(3) The address of an entity at which the family member is employed.

(4) The name of any entity if the name of the entity would reveal the name of the family member or the address at which the family member lives or is employed.

(b) For purposes of this regulation a family member includes an official's spouse or former spouse including a registered domestic partner or former registered domestic partner; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt; uncle; grand nephew; grand niece; grand aunt; grand uncle; first cousin; first cousin once removed; or spouse or former spouse of these persons other than a former in-law.

Note: Authority cited: Section 83112, Government Code. Reference: Sections 81002 and 83113, Government Code.

HISTORY

1. New section filed 6-4-2012; operative 7-4-2012. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil C010924, California

Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements and not subject to procedural or substantive review by OAL) (Register 2012, No. 23).

From: [LARRY BUSH](#)
To: [Paul Renne](#); [BrettA@positiveresource.org](#); [beverlyhayon46@icloud.com](#); [Benedict Y. Hur](#); [Peter Keane](#)
Cc: [St.Croix, John](#); [Mainardi, Jesse \(ETH\)](#)
Subject: SEI Filing Issue at Commission June 29
Date: Monday, June 22, 2015 9:41:56 AM

Chair Renne, Commissioners:

Friends of Ethics requests that the proposed regulation on electronic filing of Statements of Economic Interest announced for discussion at the June 29 Commission meeting be handled by establishing specific discussion points for the Commission to approve.

This approach will allow for a better and more robust examination of the issues involved in this proposed regulation, and is consistent with the approach Ethics has taken on other changes.

Electronic Filing of Statements of Economic Interest (Form 700). State law now requires that these forms be filed electronically. The issue before Ethics are these points:

Decision Point 1: Friends of Ethics believes all files should be placed with the Ethics Commission. At the Interested Persons meeting, the Deputy City Attorney advised that the proposed regulation that identifies filers as “city employees” would not include filers at the Housing Authority, the Office of Community Investment and Infrastructure (formerly the Redevelopment Agency), filers at the Community College or School Board, or appointees who participate in reviewing and recommending contracts and other city decisions.

Decision Point 2: Friends of Ethics believes that the system should be robust for open data and search to allow public inspection of disclosures from various relevant angles. This means being able to readily identify how many filers report gifts of tickets to events, investments in regulated businesses or those seeking contracts or development approvals, or other aspects. If this involves an additional cost, Friends of Ethics recommends that a supplemental appropriation specific to this effort be requested now, while the Board is considering the coming budget.

Decision Point 3: The proposed exemptions to allow filers to avoid public scrutiny of their financial interests lacks clarity or a reasonable standard. It relies on a “compelling reason” but fails to provide illustrative examples and criteria. In the past and recently, some filers have sought to claim this unprecedented exemption without success. This proposed regulation would now incorporate into Ethics regulations exactly the kind of evasion of public disclosure that is at the core of the public disclosure of Statements of Economic Interest. Any potential conflicts would never be seen by the public.

Decision Point 4: Penalties and Enforcement need to be enhanced. Current practice at Ethics is to levy a \$10 a day late penalty for nonfilers to a maximum of \$100, even if a filer does not produce the required documents for a full year. The practice has been to refer late filers to the state Fair Political Practices Commission. However, the FPPC actually has limited authority and has no authority to undertake a criminal prosecution.

We believe the regulations should clearly state that late filers will be referred to their appointing authority or to appropriate city agencies with a recommendation that includes

consequences up to and including dismissal. In cases where filers have failed to properly or fully identified reportable information, we believe the regulation should state that those filings will be referred to the District Attorney and City Attorney for further action. It needs to be acknowledged that a false filing could be a case of perjury.

For example, former supervisor Ed Jew filed a statement claiming that a payment he received was allowable when it actually was an apparent bribe. The Ethics Executive Director, apparently on his own initiative, returned the signed documents to then-supervisor Jew but the record does not show that the original signed documents were given to the District Attorney, City Attorney or U.S. Attorney. It was another eight months before sufficient evidence was collected to begin action to remove Mr. Jew from office. A strong and clear policy on enforcement in the regulation will be a step in addressing this gap.

In cases that are referred to the FPPC and that agency takes action, we believe those facts should be posted on Ethics internet site so that the public is informed that compliance with the law has consequences. As things currently operate, the public receives no information from Ethics on the status of referrals made to the FPPC or other agencies.

We appreciate the Commission's decision to post the regulations in advance with sufficient opportunity for the public to comment at the upcoming Commission meeting. We respectfully submit these comments in that spirit.

Larry Bush
for Friends of Ethics

Ethics proposed regulation:

http://www.sfethics.org/files/draft_regulations_for_electronic_filing_of_form_700s_6.15.15.pdf



SACRAMENTO
SAN FRANCISCO

Jonathan Yank
jonathan@majlabor.com
direct 415.266.1802

June 24, 2015

VIA E-MAIL AND REGULAR MAIL

Micki Callahan
Director of Human Resources
City and County of San Francisco
One South Van Ness Avenue, 4th Floor
San Francisco, CA 94103-5413

Re: Demand to Meet and Confer Over Proposed Changes to Form 700
File No.: 034861

Dear Micki:

We write on behalf of our client, the San Francisco Municipal Executives Association ("MEA"), to demand an opportunity to meet and confer over the proposed changes related to required Form 700 filings. We further demand that submission of the proposed changes to the Ethics Commission be delayed until that process has been completed.

To date, the City has only offered a cursory "meet and discuss," which was held on June 19, 2015, a mere 10 calendar days before the proposed changes are scheduled to go before the Ethics Commission for adoption. Such a limited opportunity to "discuss" such dramatic and far reaching changes is entirely unacceptable and unlawful. Because the proposed changes will significantly impact employees in regard to matters within the scope of bargaining, the City is required to provide notice and a reasonable opportunity to bargain over those impacts. (Gov. Code § 3504.5 and 3505.)

As a starting matter, we are extremely disappointed that the City failed to recognize just how significant the proposed changes are and the impact they will have on City employees, including MEA members. For example, it appears that the proposed changes to Form 700 filings will—for the first time—require hundreds (if not thousands) of employees to make personal information readily accessible to the public through the Ethics Commission website.

Currently, employees, other than department heads, are only required to file a Form 700 at the departmental level. Those forms are kept on site and are only available to the public upon submission of a specific information request. Posting such information on a website will inevitably increase the exposure of MEA members' personal financial information. These employees may also be subject to additional state rules and regulations (e.g. gifts). Many of these employees probably are not required to file, but have simply been included in

June 24, 2015

Micki Callahan

Re: Demand to Meet and Confer Over Proposed Changes to Form 700

Page 2

the departmental filings as a matter of convenience or practice. They certainly did not understand or agree that the information could be posted publicly.

It should go without saying that the proposed reporting changes will have a significant impact on the terms and conditions of MEA members' employment, as they open employees up to increased scrutiny over personal, financial matters, as well subjecting them to possible discipline based on a violation of those rules. (Gov. Code § 3504; *Claremont Police Officers Assn. v. City of Claremont* (2006) 39 Cal.4th 623, 631; *Building Material & Construction Teamsters' Union v. Farrell* (1986) 41 Cal.3d 651, 659.)

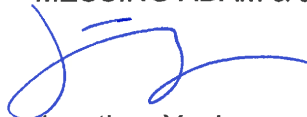
The duty to bargain requires that the City refrain from making unilateral changes to working conditions until the parties have bargained to impasse over matters within the scope of bargaining. (*People ex rel. Seal Beach Police Officers Assn. v. City of Seal Beach* (1984) 36 Cal.3d 591, 597.) Thus, before it may proceed, the City must meet with MEA (and other interested associations) for as long as it takes to freely exchange information, opinions, and proposals, and to endeavor to reach agreement regarding such matters.

Given that the Ethics Committee intends to consider the proposed changes at its meeting next week, MEA needs an immediate response from the City but no later than close of business tomorrow, June 25, 2015. If the City fails to respond or will not agree to MEA's demands, we will take any course of action necessary including seeking a temporary restraining order and preliminary injunction in the Superior Court.

Please do not hesitate to contact the undersigned with any questions.

Very truly yours,

MESSING ADAM & JASMINE LLP



Jonathan Yank

JY:jag

cc: Martin R. Gran, Director Employee Relations
Rebecca Rhine, MEA Executive Director
Gregg McLean Adam, Esq.