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Date: January 13, 2020

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy and Legislative Affairs Counsel

Re: **AGENDA ITEM 7 – Discussion and Possible Action on Proposed Amendments to Regulations Related to Article III, Chapter 1 of the Campaign and Governmental Conduct Code**

Summary: This memo presents a proposed set of amendments to the regulations supporting the Campaign and Governmental Conduct Code (Attachment 1). These amendments would institute universal electronic filing of the Form 700 Statement of Economic Interests and would establish procedures for the administration of electronic filing systems.

Action Requested: That the Commission discuss and approve the proposed amendments.

Attached to this memorandum as Attachment 1 is a set of proposed amendments to the regulations supporting Article III, Chapter I of the Campaign and Governmental Conduct Code. Section I explains the purpose of the regulation amendments, which is to mandate that all City employees who are required to file the Form 700 Statement of Economic Interests do so in an electronic format prescribed by the Commission. Section II summarizes the separate amendments contained in Attachment 1.

A public notice announcing the potential regulation amendments was published on January 7th. This satisfies the ten-day notice requirement for proposed regulations contained in Charter section 4.104. Additionally, Staff have met and conferred with employee bargaining units regarding the impacts of electronic filing on City employees. This process was concluded on November 22, 2019. The Commission is therefore able to approve the amendments at the present meeting if it so chooses.

I. **Form 700 Statement of Economic Interests – Electronic Filing Project**

A. Background

The Form 700 Statement of Economic Interests is a form promulgated by the California Fair Political Practices Commission that is used to publicly disclose personal financial interests of the filer, including income, investments, real estate, and gifts. All elected officials, board and commission members, department heads, and certain designated employees of the City must

file the Form 700 once upon assuming office, once annually, and once upon leaving office.¹ The primary purposes of disclosing personal financial interests are (1) to prevent any potential conflicts of interest from arising, and (2) to ensure that any conflicts of interest that do arise are known to regulators and to the public.

B. Electronic Filing

Under current regulations, elected officials, board and commission members, and department heads must file the Form 700 electronically using the Commission’s NetFile system.² To enable this, filers are provided with a NetFile user account. An electronic filer submits the Form 700 by logging into NetFile, entering the required information into the online interface, and clicking “submit.”

On the other hand, City employees who are required to file the Form 700 do so using a paper form that is filed with the filers’ departments. Employee filers must either print a hard copy of the Form 700 and fill it out by hand, or they must use their computers to enter their information into a PDF version of the form and then print the form out. Once the employee signs the paper form, he or she must submit it to the department’s designated filing officer. Filing officers must keep track of all employee filers in their respective departments, remind those filers to submit the form, keep track of which filers have filed the form, and report any non-filers to the Ethics Commission. Filing officers must also archive all employee filings so that they can be produced in response to a public record request.

Electronic filing has many advantages over paper filing. First, the information disclosed on an electronically filed form is much more readily accessible to the public; electronic filing allows data to be fed directly into an online database that can be easily filtered, searched, and downloaded. Paper forms that are on file with departments are only accessible by requesting the form from the filer’s department. This makes it impracticable to perform extensive searches of filings. Secondly, the filing experience is easier and faster for electronic filers. NetFile is more flexible than a paper form, allowing filers to add additional pages where necessary. NetFile also remembers prior submissions, which allows annual filers to simply review the prior year’s filing, make edits for any changes that occurred during the last year, and resubmit. Third, once implemented, electronic filing will be more streamlined and easier to administer Citywide than the current paper-based system. Filing officers will have fewer manual tasks to perform, and it will be easier to track filing deadlines and compliance rates. Electronic filing is also more environmentally friendly by reducing the City’s overall use of paper.

¹ California law requires certain local officials (and any candidate for such offices) to file the Form 700. These officials are the Mayor, members of the Board of Supervisors, Treasurer, City Attorney, District Attorney, City Administrator, and members of the Planning Commission. Cal. Gov. Code §§ 87200, 87201 (2020). Additionally, California law requires that local jurisdictions identify any additional offices or positions “which involve the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest” and require those individuals to file the Form 700 as well. Cal. Gov. Code § 87302(a) (2020).

² Campaign and Governmental Conduct Code Regulation 3.1-103-1.

Electronic filing is becoming the trend for Form 700 filing throughout the state. Forty-two of California’s fifty-eight counties have been approved by the state to use an electronic filing system for the Form 700, as have 132 cities, which include many of the larger municipalities in the state.³

Since 2014, San Francisco has mandated electronic filing of the Form 700 for elected officials, board and commission members, and department heads, of which there are roughly 500. The shift to electronic filing for this subset of filers has improved the availability of the disclosures and has made the filing process easier. At this time, Staff urges the Commission to approve the attached regulations, which would require City employees who must file the Form 700 to begin using the same electronic filing system that is in use by officials and department heads. Moving employee filers, of which there are roughly 3,500, to electronic filing will create a single, standardized filing process for City officials and employees and will maximize the benefits discussed above.

II. Summary of Regulation Amendments

Table II.A below summarizes the separate regulation amendments contained in Attachment 1 and explains the role each amendment would play in the implementation of universal electronic filing.

Table II.A – Form 700 E-Filing – Summary of Implementing Regulations

Number	Type	Purpose
3.1-102-1	New	<p>This regulation would mandate that all City employees and consultants who are required by the Campaign and Governmental Conduct Code to file the Form 700 must file the form electronically. Staff would clarify through guidance materials that the electronic filing must be completed using the Commission’s NetFile system. This subsection contains an operative date of January 1, 2021, meaning that any Form 700 filing made after that date must be submitted through NetFile. Until that time, current paper filers will continue to file in paper form.</p> <p>The regulation also clarifies that, although employee filers will no longer be submitting paper forms to their department’s filing officer, the filing officer will still be an individual in the employee’s department (and the Ethics Commission will not become the employee’s filing officer). This is relevant to other regulations, which explain the duties of the filing officer in regards to setting up electronic filer accounts.</p>
3.1-103-1	Update	<p>This existing regulation requires electronic filing for all elected officers, board and commission members, and department heads. The amendment would remove the effective date, which was January 1, 2014, and would clarify that the Ethics Commission will continue to be the filing officer for this group of filers.</p>

³ See Fair Political Practices Commission, Form 700 Electronic Filing for an Agency's Internal Filers, *available at* <http://www.fppc.ca.gov/learn/guidance-for-filing-officers-/form-700-electronic-filing.html>.

3.1-103-2(a)	Update	This existing regulation requires all electronic filers to provide the contact information necessary to set up the filer’s electronic filing account in NetFile. The amendment clarifies that filers must provide this information to their filing officer. The filing officer may or may not be the Ethics Commission, depending on to which category the filer belongs (see Regulations 3.1-102-1 and 3.1-103-1 above).
3.1-103-2(b)	New	This language would require filing officers to notify any new filer within the filing officer’s pool of filers that the filer needs to provide contact information so that an electronic filing account may be set up for the filer. This notice would have to be given within five days of the new filer beginning work for the City.
3.1-103-2(c)	Update	This language, a version of which already exists in Regulation 3.1-103-2, specifies the deadline for new filers to provide contact information necessary to set up an electronic filing account. This subsection also includes an operative date for subsections (a) through (c) of September 1, 2020. This operative date means that filers will not need to begin providing contact information to their filing officers until later this year. That will allow Staff several months to create guidance materials and prepare filing officers for the new system. The regulation also distinguishes between employees who began work prior to September 1, 2020 (for whom contact information will already be available in NetFile at that time) and employees who will begin work after that date (for whom contact information will need to be collected on an ongoing basis).
3.1-103-2(d)	New	<p>This language would require filing officers to use the contact information received from filers to create NetFile accounts for the filers. The deadline for this task would be five days after receiving the information from the filer. The deadlines in subsections (a) through (c) are designed to result in the creation of an electronic filing account for each filer within twenty days of the filer beginning work. This would grant the filer at least ten days to then file the form before the deadline, which is thirty days after beginning work.</p> <p>This subsection contains an operative date of January 1, 2021 because filing officers will not need to create any filer accounts until after that time. Until January 1, 2021, Commission Staff will create filer accounts for all filers who are currently working for the City at that time.</p>
3.1-103-3	Update	This existing regulation creates a process for filers to request a waiver from the electronic filing requirement. The amendment fixes a typo in the text of the regulation.

ATTACHMENT 1

**Proposed Amendments to Regulations Supporting Campaign and Governmental Conduct Code
Section 3.1-100 et seq**

Regulation 3.1-102-1

Effective January 1, 2021, all persons identified in Sections 3.1-103(d) or 3.1-108 of the Campaign and Governmental Conduct Code shall file assuming office, annual, and leaving office Form 700 Statements of Economic Interests in an electronic format prescribed by the Ethics Commission. The Ethics Commission is not the filing officer for such persons. The person's department head or the executive director of the person's agency is the filing officer for such persons.

Regulation 3.1-103-1

Effective January 1, 2014, all persons listed in Section 3.1-103(a) and (b) of the Campaign and Governmental Conduct Code 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. The Ethics Commission is the filing officer for such persons.

Regulation 3.1-103-2

(a) Any person required to file the Form 700 Statement of Economic Interest in electronic format shall provide the following to the Ethics Commission that person's filing officer or that filing officer's designee:

1. A current and unique City, County, State of California, Federal, or other local government agency email address;
2. The name of the filer's agency, department, or a current business mailing address;
3. A current and active daytime telephone number, which may be a work number;
4. Any other information required by the Ethics Commission consistent with the purposes and provisions of Article III, Chapter 1 of the Conflict of Interest Campaign and Governmental Conduct Code.

Information required in (1) (4) above must be provided to the Ethics Commission by the filer or his or her Filing Officer within 15 days of the filer assuming office. If an email address is not provided to the filer by the filer's government agency within 15 days of assuming office, the filer or his or her Filing Officer shall, within 30 days of assuming office, notify the Ethics Commission and the department head of the filer's agency. A filer shall inform their Filing Officer and the Ethics Commission within 15 calendar days whenever a change is made to the information required above.

(b) For any person identified in Sections 3.1-103(d) or 3.1-108 of the Campaign and Governmental Conduct Code, the person's filing officer must notify the person of the requirements of subsections (a) and (c) of this regulation within 5 calendar days of the person assuming office.

(c) Any person required to file the Form 700 in electronic format must provide the information required in subsection (a) of this regulation to the person's filing officer within 15 calendar days of the person assuming office. If an email address is not provided to the filer by the filer's government agency within

15 calendar days of assuming office, the filer shall provide the filing officer with a personal email address for the purposes of filing the Form 700 until the filer has been provided with an email address by the filer's government agency. A filer shall inform their filing officer within 15 calendar days whenever a change is made to the information required in subsection (a). For all persons identified in Sections 3.1-103(d) or 3.1-108 of the Campaign and Governmental Conduct Code, the requirements of subsections (a)–(c) of this regulation become effective September 1, 2020. Any person identified in Sections 3.1-103(d) or 3.1-108 of the Campaign and Governmental Conduct Code who assumed office prior to September 1, 2020 shall provide the information required in subsection (a) of this regulation to the person's filing officer upon request.

(d) Within 5 calendar days of the receipt of the information provided by a filer under subsection (a), a filing officer shall use the information to create an electronic filing account for the filer in the electronic filing system designated by the Ethics Commission and shall provide the filer with the information necessary to access the account. The requirements of this subsection (d) shall become effective January 1, 2021.

Regulation 3.1-103-3

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.