



COUNCIL AGENDA: 9/10/2019
ITEM: 3.3
FILE NO: 19-755

Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Toni J. Taber, CMC
City Clerk

SUBJECT: SEE BELOW

DATE: September 10, 2019

SUBJECT: Form 700 Filings Audit Report.

RECOMMENDATION:

As recommended by the Public Safety, Finance and Strategic Support Committee on August 15, 2019, accept the Form 700 Filings Audit Report.

CEQA: Not a Project, File No. PP17-009, Staff Reports, Assessments, Annual Reports, and Informational Memos that involve no approvals of any City action. (City Auditor)

[Public Safety, Finance and Strategic Support Committee referral 8/15/19 - Item (d)4]



Office of the City Auditor

**Report to the City Council
City of San José**

**FORM 700s: DESPITE HIGH
OVERALL FILING RATES,
THE CITY CAN IMPROVE
TIMELINESS AND
COMPLETENESS OF
FILINGS**

**Report 19-06
August 2019**

This page was intentionally left blank

August 8, 2019

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

Form 700s: Despite High Overall Filing Rates, the City Can Improve Timeliness and Completeness of Filings

The Political Reform Act of 1974 requires many public officials, employees, and some consultants to complete a “Statement of Economic Interests,” also known as the Form 700. The purpose of the Form 700 is to support transparency and accountability in the state and local governments of California by providing “necessary information to the public about an official’s personal financial interests.” These interests can include ownership of stocks, real estate, or outside employment.

The Fair Political Practices Commission (FPPC) is the regulatory body for these financial disclosures, and the City Clerk’s Office is responsible for collecting the City’s filings. The Clerk’s Office relies on staff in individual departments (“department liaisons”) to identify Form 700 filers and ensure that they are correctly entered into the City’s Form 700 e-filing system (SouthTech).

Filers must submit a Form 700 each year, as well as upon assuming and leaving their positions. The City requires that some of these individuals also file a separate “Family Gift Report” (FGR). For 2018, there were about 2,400 Form 700 filings due from employees, elected officials, board and commission members, and consultants. The objective of our audit was to review the filing status for the City’s Form 700 filers. This is a follow-up to prior audits in this same subject area.

Finding 1: Most Form 700s Were Filed as Required, But the City Can Improve the Timeliness of Filings. The City has been successful in getting most employee and board and commission (“B&C”) filers to submit Form 700s, with a 95 percent filing rate for 2018. However, the City can improve the timeliness of leaving office and assuming office filings and the accurate identification of filers. To address this, the City Clerk’s Office should streamline the process for updating filer information, host regular meetings with department liaisons, and provide updated procedures with consistent expectations for liaisons. The City Clerk’s Office can further encourage high filing rates by establishing procedures surrounding the assessment of late fines and referring non-filers to the FPPC. Also, since some filers were not indicated as needing to file both a Form 700 and a Family Gift Report (FGR), we recommend the City Clerk’s Office regularly reconcile the rosters of FGR and Form 700 filers.

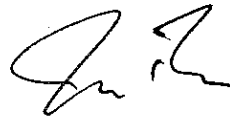
Finding 2: The City Can Improve Processes for Ensuring Consultants File Required Form 700s. The City faces challenges in getting consultants to file Form 700s, with filing rates below that of employees and B&C filers. The filing rate for all consultant filings was 83 percent,

with leaving office filings under 50 percent. Overall, there is a lack of consensus across departments in how to enforce consultant Form 700 compliance. In 2018, the City potentially paid over \$1 million to three consulting firms with outstanding Form 700s. We recommend that the Administration clarify responsibilities for the Form 700 compliance process as it develops Citywide guidelines on contract management. Moreover, to make it easier for the City to notify consultants of their obligation to file, the City should update its contract templates to provide fields for consultant *business* emails and should separately collect alternative *personal* email addresses from consultants to follow up on leaving office statements.

Finding 3: Better Guidance to Ensure Form 700s Are Complete and Reviewed for Potential Conflicts. In addition to improving filing and timeliness rates, the City can take steps to promote the accuracy and completeness of Form 700s, as well as proactively review filings for potential conflicts of interest. While the e-filing system has some informational resources available, several filers have nonetheless expressed that they still find the process confusing. The City Clerk’s Office can improve access to detailed filing instructions from the FPPC as well as to the FPPC’s Advice page. Finally, by establishing procedures for reviewing filings for completeness and guidance on identifying potential conflicts of interest, the City can help ensure that adequate information is available to the public and that potential conflicts of interest are addressed.

This report has 9 recommendations to improve timeliness and completeness of Form 700 and FGR filings. We plan to present this report at the August 15, 2019 meeting of the Public Safety, Finance, and Strategic Support Committee of the City Council. We would like to thank the City Clerk’s Office, the City Manager’s Office, the City Attorney’s Office, the Human Resources Department, and the Information Technology Department for their time and insight during the audit process. The City Clerk and the Administration have reviewed the information in this report, and their response is shown on the yellow pages.

Respectfully submitted,



Joe Rois
City Auditor

finaltr
JR:lg

Audit Staff: Chris Bernedo
Marisa Lin

| | | |
|----------------|-------------------|------------------|
| cc: Dave Sykes | Neelam Naidu | Rob Lloyd |
| Toni Taber | Jennifer Schembri | Jennifer Maguire |
| Rick Doyle | Allison Suggs | Lee Wilcox |

This report is also available online at www.sanjoseca.gov/audits

Table of Contents

| | |
|--|---------------------|
| Cover Letter | 3 |
| Introduction | 7 |
| Background | 7 |
| Finding 1 | |
| Most Filers Submitted Form 700s as Required, But the City Can Improve the Timeliness of Filings | 13 |
| 95 Percent of Designated Employees and Board and Commission Members Submitted Form 700s as Required | 13 |
| The City Can Improve the Process for Identifying Filers | 15 |
| The City Clerk’s Office Lacks Consistent Policy on Enforcement for Late or Non-Filers..... | 19 |
| Discrepancies Between Family Gift Report and Annual Form 700 Filers..... | 21 |
| Finding 2 | |
| The City Can Improve Processes for Ensuring Consultants File Required Form 700s | 23 |
| Challenges in Identifying and Following Up On Consultant Filings | 23 |
| Finding 3 | |
| Better Guidance to Ensure Form 700s Are Complete and Reviewed for Potential Conflicts | 29 |
| Ensuring Form 700s Are Completed Correctly Can Support Transparency and Accountability | 29 |
| The City Could Proactively Review Employee Filings for Potential Conflicts of Interest..... | 32 |
| Conclusion | 35 |
| Audit Objective, Scope, and Methodology | 37 |
| Appendix A | |
| Cover Page, Statement of Economic Interests (Form 700) | A-1 |
| Appendix B | |
| City of San José Family Gift Reporting Form | B-1 |
| Administration’s Response | yellow pages |

Table of Exhibits

| | |
|---|----|
| Exhibit 1: Determining When Consultants Should File..... | 10 |
| Exhibit 2: City Employees Made Up the Majority of Identified Form 700 Filers for 2018..... | 11 |
| Exhibit 3: Form 700 Online Public Portal..... | 12 |
| Exhibit 4: Most Designated Employees and Board and Commission Members Filed Form 700s as Required..... | 14 |
| Exhibit 5: Spikes in Submitted Filings Correspond to Filing Notifications..... | 15 |
| Exhibit 6: Assuming Office and Leaving Office Filings Were Less Timely..... | 16 |
| Exhibit 7: Most Late Assuming Office and Leaving Office Filings Were Submitted More Than 30 Days..... | 16 |
| Exhibit 8: 270 Employee Filers Assumed or Left Office During 2018..... | 18 |
| Exhibit 9: Most Late Annual Filings Were Submitted Shortly After the Deadline..... | 19 |
| Exhibit 10: Family Gift Reports Have Lower Rates of Filing Than Form 700s..... | 22 |
| Exhibit 11: Consultants Had Lower Filing Compliance Than Other Filers..... | 23 |
| Exhibit 12: Coordination Is Required to Ensure Compliance of Consultant Filers..... | 25 |
| Exhibit 13: Attachment B of an Example Service Order..... | 27 |
| Exhibit 14: SouthTech Filer Portal..... | 30 |

Introduction

The mission of the City Auditor’s Office is to independently assess and report on City operations and services. The audit function is an essential element of San José’s public accountability, and our audits provide the City Council, City management, and the general public with independent and objective information regarding the economy, efficiency, and effectiveness of City operations and services.

In accordance with the City Auditor’s Fiscal Year (FY) 2018-19 Audit Work Plan, we have completed an audit of the City’s filing process for Statements of Economic Interests (or Form 700s).

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 on 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 “Audit Objective, Scope, and Methodology” section of this report.

The Office of the City Auditor thanks the management and staff of the City Clerk’s Office, the City Manager’s Office, the City Attorney’s Office, the Human Resources Department, and the Information Technology Department for their time, information, insight, and cooperation during the audit process.

Background

California’s Political Reform Act of 1974 (“the Act”) was passed to fight corruption and introduce transparency into campaign activities and the personal financial affairs of state and local officials.¹ Passed in the aftermath of the Watergate scandal, the Act requires elected and public officials, employees, and government consultants to disclose certain economic interests that could influence their decision-making, and to disqualify themselves from decisions, as appropriate, to avoid conflicts of interest. The Fair Political Practices Commission (FPPC) is the regulatory body that oversees the Act.

Statement of Economic Interests (Form 700)

Individuals required to disclose their financial interests file a Statement of Economic Interests, also referred to as a Form 700. With respect to the City, there are two broad categories of Form 700 filers under the Act:

¹ The Act can be found in California Government Code sections 81000-91014.

- **87200 filers:** Mayor and members of the City Council and candidates to those offices, the City Attorney, the City Manager, Finance Director and Retirement Board members, as specified in Government Code section 87200.
- **Conflict of interest code filers:** Certain board and commission (B&C) members, employees, and consultants who make or participate in making a governmental decision. These are identified and designated as filers under a local agency's unique "conflict of interest code."

The three main types of Form 700 statements are:

- **Annual:** Due at the beginning of April each year, annual Form 700s list the economic interests held by the filer for the prior calendar year.
- **Assuming Office:** These statements must be filed within 30 days of a filer beginning their position and list the economic interests of the filer as of the date they entered office, as well as any income received in the last 12 months.
- **Leaving Office:** These statements must be filed within 30 days of the filer leaving their position and list the economic interests of the filer from January 1 to the date they left office, unless otherwise specified.

Form 700 Schedules of Reportable Interests

The Form 700 contains six types of schedules that cover different types of economic interests:

Schedule A-1: Investments

Schedule A-2: Business Entities/Trusts

Schedule B: Real Property

Schedule C: Income

Schedule D: Gifts

Schedule E: Travel Payments

Filers are only required to complete schedules that are applicable to them at the appropriate level of disclosure, as determined by the conflict of interest code. For example, some conflict of interest code filers are only required to report interests located in or doing business with the City, while other filers must report all interests. Not all filers will have interests to report (i.e., will not have to complete any schedules).

Family Gift Report

Per the City’s Gift Ordinance (Municipal Code section 12.08.210), designated employees and B&C members must also file a Family Gift Report (FGR) with their annual Form 700. The purpose of the FGR is to provide transparency into potential conflicts of interest from gifts given to individuals related to City employees and B&C members. The ordinance requires these filers to report gifts received by an employee’s domestic partner, spouse, or any dependent child that would have been prohibited had it been offered to the filer. According to the Gift Ordinance, filers are prohibited from receiving gifts above \$50 from a restricted source.²

The City’s Conflict of Interest Code Identifies Designated Filers

While the Act lists certain positions as requiring to file (87200 filers), it assigns responsibility to government agencies to identify positions that are involved in:

“the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.”³

With each position identified, the agency must determine the appropriate level of disclosure—in other words, the types of investments, business positions, real property interests, and income sources that are reportable. This information should be contained in the agency’s conflict of interest code. Each agency is required to review their conflict of interest code every even-numbered year and update the code for any changes in positions.

The City’s conflict of interest code was last amended in September 2018.⁴ As a result of the review, the City added a net of 38 positions, reflecting the creation of the Community Energy Department and staffing changes in other departments, as well as the addition of the Voluntary Employees Beneficiary Association (VEBA) Advisory Committee. In modifying the code, the City Clerk’s Office and City Attorney’s Office consulted with departments on changes in job responsibilities or staffed positions.

Consultant Form 700 Filers

In some cases, consultants who work for the City are also required to file Form 700s. According to the Act, a consultant is required to file if they:

² A restricted source is defined as “any individual, firm or entity whose interest or whose employer’s or client’s interest” has been “materially affected by the work of such officer or employee of the City or Successor Agency [City employee] within the two years prior to the time the gift was given” or “[i]n the future could reasonably be foreseen to be materially affected by the work of such [City employee]” (Municipal Code section 12.08.040).

³ The 2019 Political Reform Act, Article 3.5, § 87302.

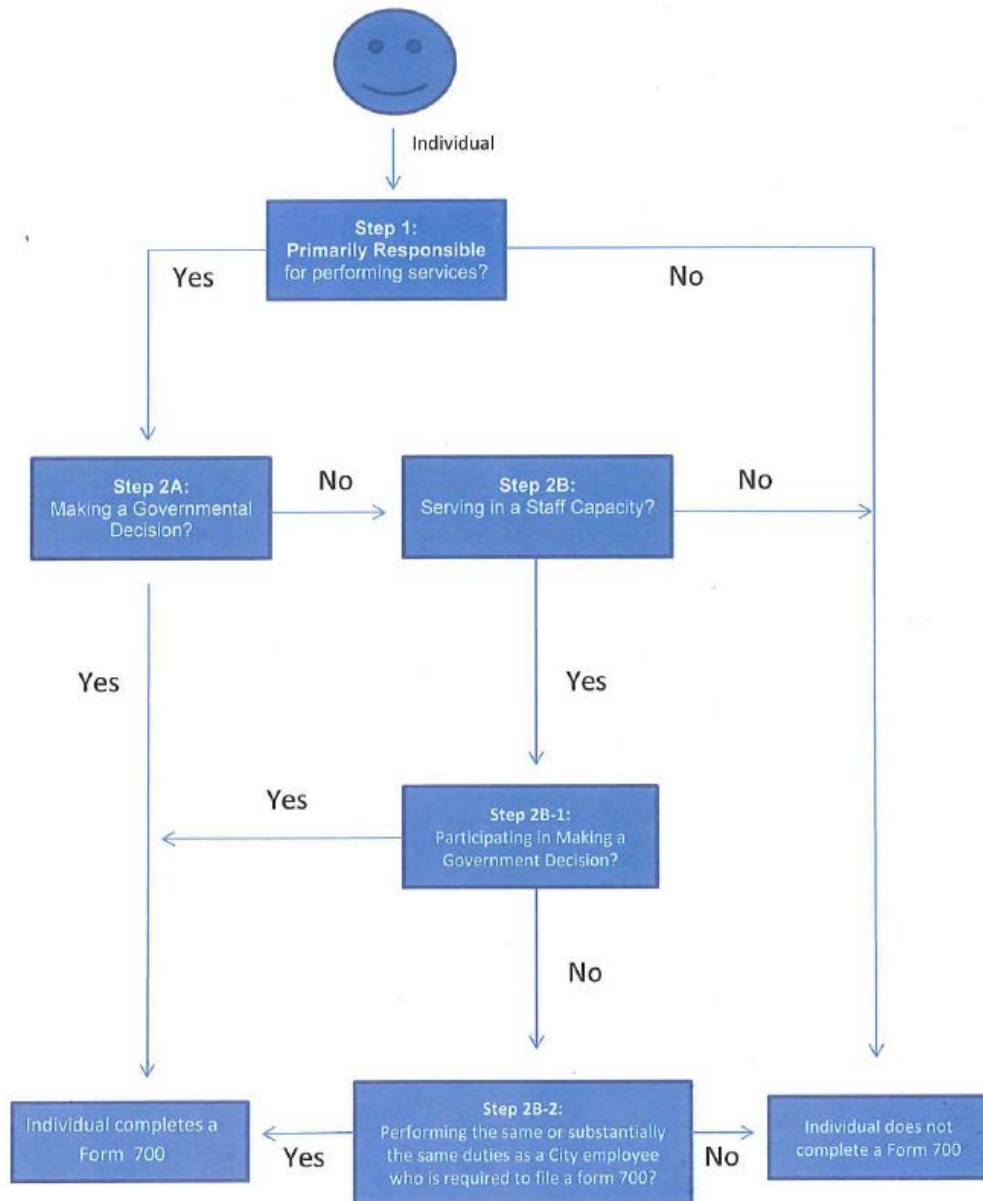
⁴ The City’s current conflict of interest code (Resolution No. 78798) can be found here: <https://records.sanjoseca.gov/Resolutions/RES78798.pdf>.

- 1) Make a governmental decision, or
- 2) Serve in a staff capacity and participate in making a governmental decision, or perform the same duties that would otherwise be performed by a designated employee filer.

Exhibit I shows a flowchart illustrating the decision points for determining when a consultant should be required to file.

Exhibit I: Determining When Consultants Should File

Analysis for Determining if an Individual
Must Complete a Form 700 (Statement of Economic Interests)

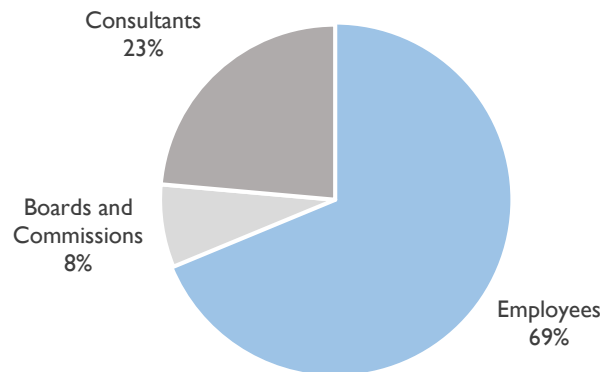


Source: Standard and Master Consultant Agreement Forms and Instructions

Employees Make Up the Majority of the City’s Form 700 Filers

For 2018, there were 2,400 Form 700 filings due according to the City Clerk’s e-filing database (SouthTech). This includes annual, assuming office, and leaving office statements. The majority of filings were due from City employees. In addition to annual statements, about 1,300 employees and B&C members were also identified as requiring an FGR.⁵ Consultants are not required to file an FGR. A breakdown of Form 700 filers is shown in Exhibit 2.

Exhibit 2: City Employees Made Up the Majority of Identified Form 700 Filers for 2018⁶



Source: Auditor analysis of SouthTech reports as of May 20, 2019

The Form 700 Filing Process

The City Clerk is the Form 700 filing officer for the City. As the filing officer, the City Clerk collects and retains copies of Form 700s for public viewing, and, as the filing official for 87200 filers, forwards Form 700s to the FPPC if applicable.⁷ The City Clerk has assigned one staff person to oversee the Form 700 process.

Because the conflict of interest code only specifies which positions must file, the City Clerk’s Office relies on departments to identify the individuals holding designated positions. The City Clerk’s Office has instituted a decentralized system of department liaisons who work with department attorneys to identify employees and consultants. For example, Recreation Supervisors were added to the conflict

⁵ Discrepancies in the numbers of annual Form 700 filers and FGR filers are addressed in Finding 1.

⁶ Of the City’s Form 700 filers, there were also 29 individuals identified as 87200 filers, including elected officials, certain boards and commissions, and City staff overseeing public investments.

⁷ The City Clerk serves as the “filing officer” or the “filing official”, depending on the category of filer. The FPPC defines a filing officer as “the person or agency which receives and retains original statements of economic interests.” Serving as the filing officer for conflict of interest code filers, the City Clerk collects and retains the original copies of those statements. A filing official simply receives, retains copies of, and forwards original statements to the filing officer. As the filing official for 87200 filers, the City Clerk retains copies of and forwards the original statements to the FPPC (i.e., the filing officer for 87200 filers).

of interest code in September 2018. The City Clerk’s Office relied on the department liaison in the Parks, Recreation & Neighborhood Services Department to identify the City employees holding this position.

Designated filers can manually submit paper filings of their Form 700s and FGRs to the City Clerk’s Office or file electronically through an online web portal.⁸ Most filers use the online portal; only 4 percent of all filings submitted in 2019 were submitted on paper.⁹ The City Clerk’s Office must scan these manual filings into the e-filing system.

The City Clerk’s online portal also enables members of the public to look up submitted filings. In January 2018, the City Clerk’s Office switched e-filing vendors from NetFile to SouthTech Systems. While user data, such as name and position, was imported from one system to another, copies of the filings submitted before 2018 were not transferred due to the high cost of exporting historical forms. However, these are readily available from the City Clerk’s Office upon request.

Exhibit 3: Form 700 Online Public Portal

The screenshot shows the 'DisclosureDocs eRetrieval' portal for the City of San José. The interface includes a navigation bar with 'Home' and 'Filer Form Search' links. The search area contains several input fields: 'Entity' (dropdown), 'Agency' (dropdown), 'Position' (dropdown), 'Form' (dropdown), 'Filed Date From' (dropdown), and 'To' (dropdown). Below these are search criteria for 'Filer Name(s)' with radio buttons for 'Exact Match', 'Start With' (selected), and 'Partial Search', along with a '(Min. 2 Char.)' requirement. There are also text boxes for 'Last Name' and 'First Name', and a checkbox for 'Show Only Currently Held Positions'. A red 'Search' button is located below the search criteria. The results section, titled 'Found Filers', contains a table with the following columns: Last Name, First Name, Middle Name, Position Title, Agency Name, Entity Name, and View Forms. The table is currently empty, displaying 'No data to display'. The footer of the page reads: 'DisclosureDocs eRetrieval™ Version 3.19.0212 | Copyright 2007-2019 SouthTech Systems, Inc. All rights reserved. | About Us'.

Source: Auditor screenshot of the City’s Form 700 public portal

⁸ The public portal can be found at: <https://sanjosecity.southtechhosting.com/DDocsWebRetrieval/Search/SearchFilerForms.aspx>.

⁹ As of May 15, 2019.

Finding I Most Filers Submitted Form 700s as Required, But the City Can Improve the Timeliness of Filings

Summary

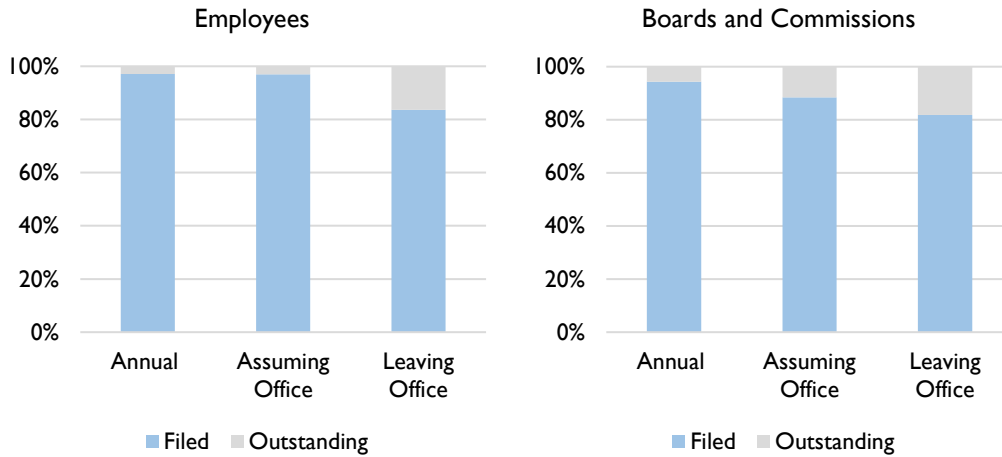
The City has been successful in getting most employee and board and commission (“B&C”) filers to submit Form 700s; at the time of the audit, 95 percent of 2018 filings had been submitted. However, just 60 percent of leaving office filings and 66 percent of assuming office filings were filed on time. Organizing regular meetings with department liaisons and providing updated procedures can help set consistent expectations for liaisons of their responsibilities. The City Clerk’s Office can also enhance filing rates by establishing procedures to consistently assess late fines and refer non-filers to the FPPC. In addition, some employee and B&C filers were found to be missing from the e-filing system or were not indicated as needing to file both a Form 700 and a Family Gift Report (FGR), though both are required. To address these discrepancies, the City Clerk’s Office should streamline the updating of filer information and regularly reconcile rosters of FGR and Form 700 filers.

95 Percent of Designated Employees and Board and Commission Members Submitted Form 700s as Required

Two months after the filing deadline, there was an overall 95 percent filing rate for 2018 Form 700 filings among employee and board and commission (B&C) filers.¹⁰ Of the 1,300 employees and B&C filers required to file annual Form 700s, 42 did not file. For assuming office and leaving office filings due, 11 and 37 individuals did not file, respectively. Exhibit 4 below shows filing rates for the different types of filings.

¹⁰ For this report, Annual Form 700s and Family Gift Reports reviewed cover calendar year 2018 and were due in April 2019. Assuming office and leaving office Form 700s reviewed were for filers who had assumed or left office between January 1, 2018 and December 31, 2018 (due dates between January 31, 2018 and January 30, 2019).

Exhibit 4: Most Designated Employees and Board and Commission Members Filed Form 700s as Required¹¹



Source: Auditor analysis of SouthTech reports as of May 20, 2019

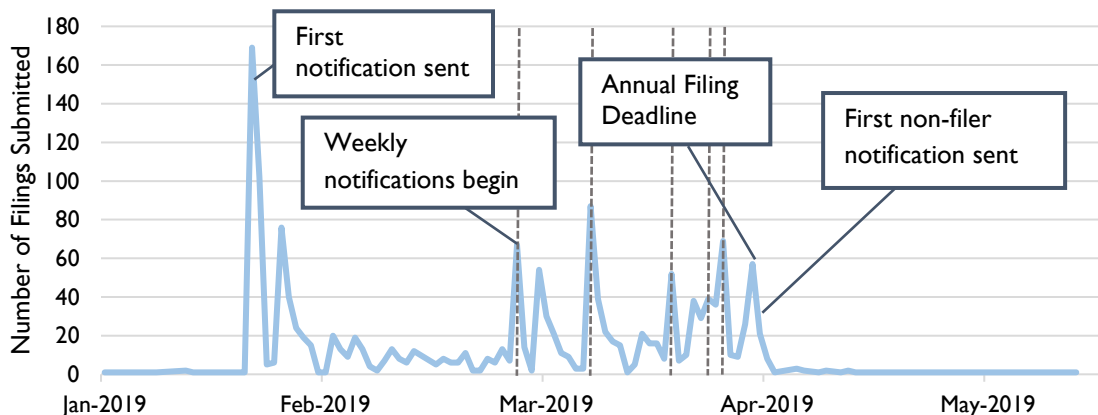
The City Clerk’s Notifications Appear to Encourage Timely Filing

Both annual Form 700s and family gift reports (FGRs) were due on April 2, 2019. The City Clerk’s Office began the process of notifying annual filers of their filing requirements beginning in late January. Afterwards, weekly notifications were sent to all filers beginning in March. The City Clerk’s Office also sent out a notice of non-filing to all outstanding filers the day after the deadline.

This process appears to have encouraged filers to submit their annual Form 700 prior to the filing deadline. Exhibit 5 shows the number of annual filings submitted over time between January and May 2019. The largest spike of submitted annual filings occurred the day the first notification for annual filings was sent by the City Clerk’s Office. According to reports from SouthTech, additional notifications were sent five times in March, as indicated by dotted lines in Exhibit 5. These dates correspond to spikes in the number of filings submitted over time.

¹¹ For employees, there were 1,183 annual, 263 assuming office, and 189 leaving office statements due. For B&C members, there were 123 annual, 26 assuming office, and 33 leaving office statements due.

Exhibit 5: Spikes in Submitted Filings Correspond to Filing Notifications



Source: Auditor analysis of SouthTech reports as of May 20, 2019. The dotted lines indicate dates when weekly notifications were sent out before the deadline.

The City Can Improve the Process for Identifying Filers

Although most designated employees and B&C filers submitted their required filings for 2018, they were not always filed on time. There were also instances in which it appeared filers were not appropriately identified. While the FPPC places the ultimate responsibility on individuals to file in accordance with its requirements, appropriately identifying and notifying filers can help ensure compliance.

Minor Discrepancies in Identification of Employee and Board and Commission Filers

Some designated employees and B&C filers were not identified or misidentified as filers in SouthTech. This included:

- 8 employees misidentified as annual filers who were in non-filing positions
- 12 employees who should have been annual filers but were not in SouthTech
- 17 employee filers who separated in 2018 but were misidentified as annual filers instead of leaving office filers
- 8 employee filers hired in 2018 who were not in SouthTech

In addition, there were eight B&C members who began their terms in 2019 and were not entered into SouthTech.¹²

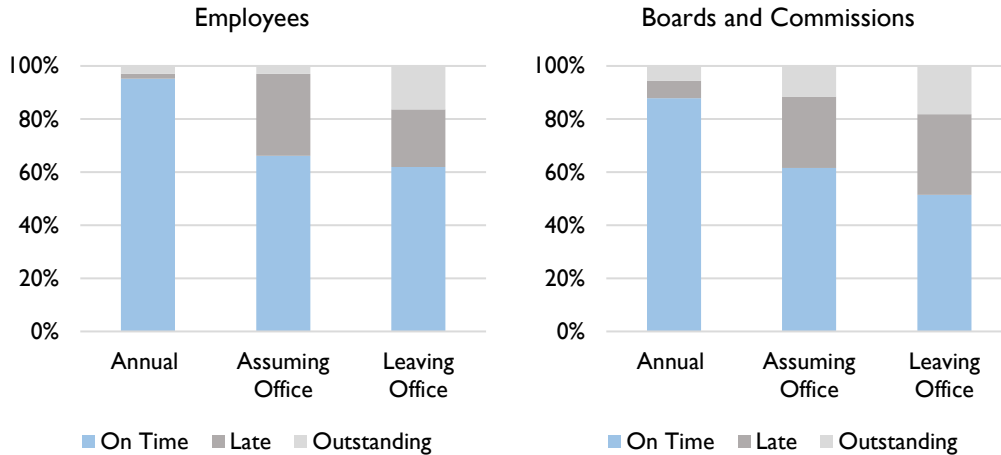
¹² It should be noted that the City Clerk's staff positions responsible for Form 700s and for boards and commissions were vacant during part of FY 2018-19. Over the course of the audit, the City Clerk's Office filled the Form 700 position, and the boards and commissions position remained vacant. According to the City Clerk's Office, these vacancies attributed to some of the discrepancies in identifying filers, particularly for board and commission members.

We forwarded this information to the City Clerk’s Office for follow-up.

Assuming and Leaving Office Dates Are Not Always Updated Timely

While annual Form 700s were generally filed on time, assuming office and leaving office filings were often late. For designated employees and B&C filers, there were 88 late assuming office filings and 51 late leaving office filings. Exhibit 6 shows the percentage of filings that were submitted on time for each type of filing.

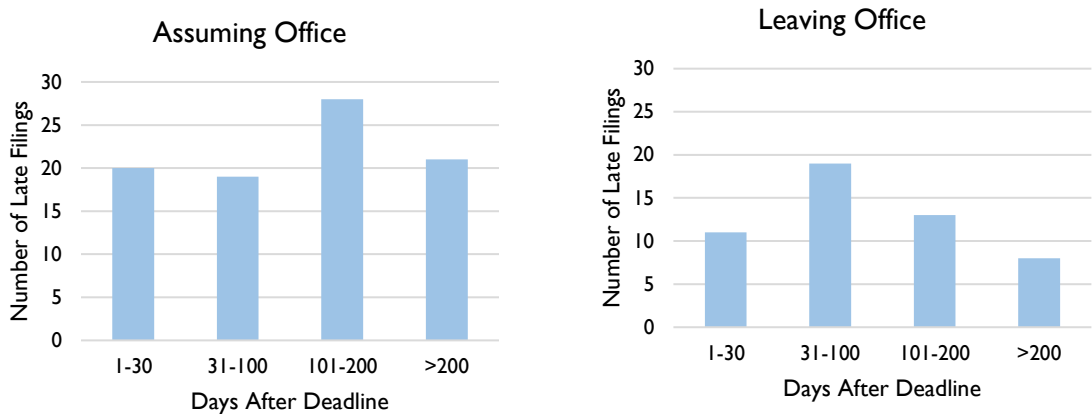
Exhibit 6: Assuming Office and Leaving Office Filings Were Less Timely



Source: Auditor analysis of SouthTech reports as of May 20, 2019

Most late assuming office and leaving office filings were submitted more than 30 days after their deadlines. Exhibit 7 shows the distribution of days late for assuming office and leaving office filings.

Exhibit 7: Most Late Assuming Office and Leaving Office Filings Were Submitted More Than 30 Days After Their Deadlines



Source: Auditor analysis of SouthTech reports as of May 20, 2019

According to the City Clerk's Office, part of the reason some assuming office statements may be filed late is that designated employees and B&C members may not always be entered into SouthTech timely. In fact, 55 percent of late assuming office filings were sent initial notices many weeks after the filer had assumed office. This suggests department liaisons or City Clerk staff entered these filers into SouthTech well past their start dates. The same issue occurred for 38 percent of late leaving office filings.

Additional Guidance and Technical Solutions May Streamline Process

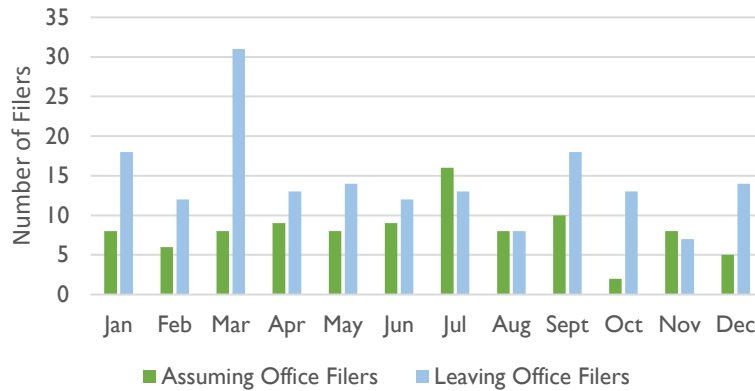
Interviews with some department liaisons revealed inconsistent understanding of their roles in the Form 700 filing process. Not all of them, for example, regularly updated SouthTech. Failing to have consistent expectations among liaisons can lead to oversights in identifying and following up with filers.¹³

In past years, the City Clerk's Office hosted regular meetings with department liaisons, which covered expected responsibilities for liaisons, as well as refreshers on key elements of the filing process. The City Clerk's Office has since stopped organizing meetings, but City staff suggest that re-introducing such meetings could help alleviate confusion about the roles of department liaisons in the filing process.

Furthermore, in 2018, 270 employee filers joined or left their filing positions, suggesting a need for ongoing support for liaisons. With assuming and leaving office filings due throughout the year, having the Clerk's Office document the expectations for liaisons while offering regular opportunities for liaisons to communicate with the Clerk's Office can address any issues they encounter and streamline the overall filing process.

¹³ In the 2016 audit of the Office of the City Clerk, this office recommended the City Clerk's Office clarify the roles of department liaisons, work with the Human Resources and Information Technology Departments to develop more useful PeopleSoft reports, and develop procedures for department liaisons to use NetFile (the former e-filing system). As of June 2017, the City Clerk's Office had implemented this recommendation; however, changes to the e-filing system, recent vacancies in the City Clerk's Office, and changes to the department liaisons' roles in the filing process necessitate revisiting these issues.

Exhibit 8: 270 Employee Filers Assumed or Left Office During 2018¹⁴



Source: Auditor analysis of PeopleSoft data.

The City’s human resources management system (PeopleSoft) contains data indicating whether an employee is a Form 700 filer based on position information. However, this data does not appear to be completely accurate. The data had previously been used by the City Clerk’s Office to manually reconcile and update the prior e-filing system, since the two systems could not communicate directly. According to the current e-filing vendor, it may be possible to use PeopleSoft data to automate the process of updating filer information in SouthTech.

Alternatively, department liaisons could be provided regular reports from PeopleSoft of any changes with employees in filing positions, which can then be used to manually update information in SouthTech. Some department liaisons appear to have already initiated a similar process. Both options would likely require cleaning the Form 700 data in PeopleSoft to ensure it reflects the most recent conflict of interest code and can provide accurate filer information.

Even with the exploration of technical solutions to streamline the identification of filers, it is the City Clerk’s Office’s responsibility to ensure department staff have sufficient guidance to understand their roles in the filing process.

¹⁴ This number did not include temporary employees, who may need to file depending on their responsibilities and would also add to department liaison workload. SouthTech listed 21 filers as temporary employees as of May 2019.

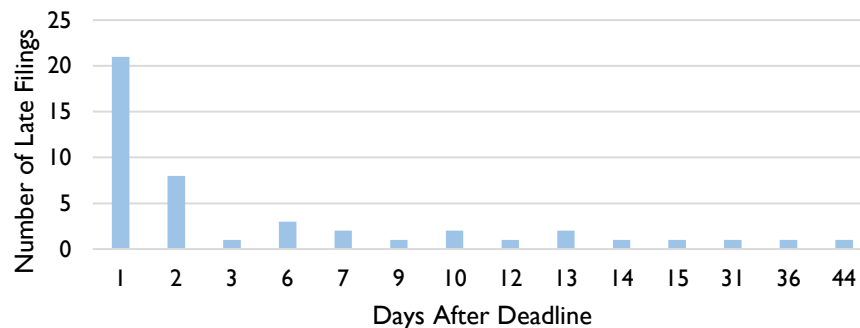
Recommendation #1: To help streamline the City’s process of identifying Form 700 filers, the City Clerk’s Office should reestablish regular department liaison meetings and:

- a) **Update and document expectations for department liaisons regarding entering employee assuming and leaving office information into the e-filing system; and/or**
- b) **Work with the Human Resources and Information Technology Departments and the e-filing system vendor to automate the process for updating employee information.**

The City Clerk’s Office Lacks Consistent Policy on Enforcement for Late or Non-Filers

Of the annual filings submitted at the time of this review, only 46 were submitted late (including consultants). Among late filings, most were submitted within two days after the deadline. However, some filings were submitted much later. The City Clerk’s Office sent the first non-filing notice to filers on April 3, 2019, the day after the deadline.

Exhibit 9: Most Late Annual Filings Were Submitted Shortly After the Deadline



Source: Auditor analysis of reports from SouthTech as of May 20, 2019
 Note: Does not include assuming or leaving office filings

The Political Reform Act (“the Act”) provides two mechanisms for the filing officer to enforce filing compliance: fines and referrals. The first mechanism applies to late filings and the second to non-filings.

Late Filings May Be Subject to Fines

Section 91013 of the Act establishes late fines for statements submitted after their applicable deadlines. For the annual Form 700, it is generally April 1 of the calendar

year following the filing year.¹⁵ For assuming office and leaving office statements, the deadline is 30 days after the individual assumes or leaves office. The City requires FGRs be submitted with the annual Form 700.

Filing officers may impose fines on individuals who submit late filings at a rate of \$10 per day late, up to \$100. While the FPPC allows jurisdictions to decide whether they want to charge fines for Form 700s (i.e., charging fines is optional), the filing officer must apply any fining policy in an impartial manner. Fines may be waived for acceptable reasons if the filer submits the Form 700 within 30 days of receiving their first notice of non-filing. Acceptable reasons include illness, injury, personal tragedy, and loss or unavailability of records. The FPPC does not permit filing officers to waive fines for reasons such as vacation, additional time needed, or lost forms. The City does not assess fines on FGRs.

Although the City Clerk's Office has assessed fines in the past for late filings, it has not been consistent. According to the City Clerk's Office, in FY 2017-18, the City collected late fines from nine individuals or firms. Most of these individuals were fined for filing late 2016 annual Form 700s. There were no fines collected for late 2017 annual Form 700s due to the transition to a new e-filing vendor during early 2018. However, the City Clerk's Office reported that some late fines have been assessed for 2018 Form 700s.

At the time of review, 256 Form 700s for 2018 were submitted after their respective deadlines, including consultants. Of these, there were 46 annual statements, 153 assuming office filings, and 57 leaving office filings.

Non-Filers Can Be Referred to the Fair Political Practices Commission (FPPC)

While fines can be a useful enforcement mechanism to encourage filing, the filing officer cannot assess them until the filing has been submitted. Instead, the filing officer can refer a non-filer to the FPPC, which then follows up and can impose fines of up to \$5,000. The only requirement for filing officers in making referrals is that the officer send two written notifications to the non-filer with a reasonable amount of time between them (e.g., 20-30 days).¹⁶

The City Clerk's Office has not routinely referred cases to the FPPC, citing the follow-up process as being time-intensive. For 2016, the City Clerk's Office referred 19 filers for non-filing of annual Form 700s. As noted earlier, for 2017, there were no referrals for annual filers due to the transition to SouthTech. At the time of the audit, for 2018 there were 186 outstanding Form 700s. Previously, the Office sent non-filer notifications to the physical addresses of filers, which

¹⁵ Because April 1, 2019 fell on a state holiday, state law required moving the filing deadline to the next business day, or April 2, 2019.

¹⁶ To guide agencies in following up with non-filers, the FPPC provides a recommended timeline for non-filer notifications in its "Notification Guidelines" handout.

required multiple steps to print and prepare mailings. The FPPC has confirmed, however, that notifications can be sent via email, which can help streamline the referral process.

Current E-Filing System Can Track Follow-up Activity

The City Clerk's e-filing system has the capacity to simplify the follow-up process by sending non-filing notices, generating deadlines, and tracking late fines. At least one other jurisdiction uses the system to track requests for late fine waivers as well. Making use of these features could help to streamline both the assessing of late fines and the referral of non-filers to the FPPC for enforcement.

Recommendation #2: The City Clerk's Office should establish standard procedures surrounding the assessment of late fines and referral of non-filers to the Fair Political Practices Commission (FPPC). The procedures should include using its e-filing system to track follow up activities, such as assessing late fines and sending non-filing notices.

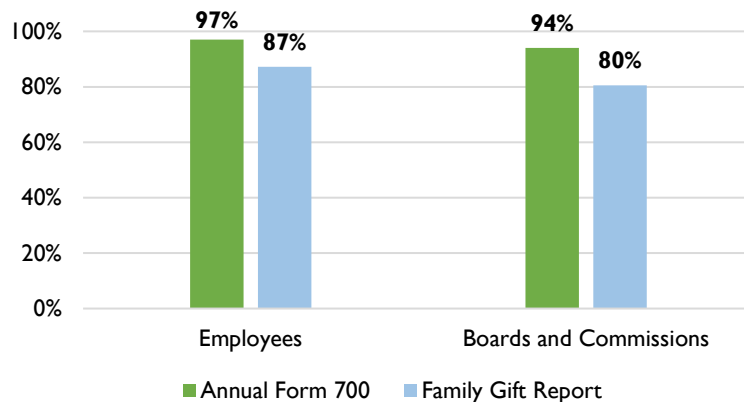
Discrepancies Between Family Gift Report and Annual Form 700 Filers

Though employees and B&C members must file both annual Form 700s and FGRs, more filers submitted their Form 700s than FGRs. City staff explained that the difference may be due in part to filers not being aware that they must also submit an FGR in addition to a Form 700.¹⁷ For example, the City added the position of Recreation Supervisor to the most recent conflict of interest code (updated September 2018). While all 13 supervisors filed their annual Form 700s on time, only one filed their FGR.

In addition to having disparate filing rates, the total numbers of annual Form 700 filers and FGR filers in SouthTech also differed. While 1,306 employees and B&C members were labeled as requiring annual Form 700s, only 1,271 were labeled as requiring FGRs. Assuming 1,306 (instead of 1,271) individuals should have also filed FGRs, the "true" filing rate for FGRs is even lower than for annual Form 700s. We provided information on the missing FGR filers to the City Clerk's Office for follow-up. Exhibit 10 compares filing rates between annual Form 700s and FGRs.

¹⁷ Initially, the City configured its e-filing system to require employee and B&C filers to complete both an FGR and Form 700 in order to submit their Form 700. The state later disallowed this practice, explaining that the FGR was a City requirement, not a state requirement.

Exhibit 10: Family Gift Reports Have Lower Rates of Filing Than Form 700s



Source: Auditor analysis of reports from SouthTech. Filing rates for both annual statements and FGRs are as of May 20, 2019. Both filings were due April 2, 2019.

According to the e-filing vendor, the system cannot currently make FGRs an automatic requirement for all designated employees and officials, which may partially explain the difference between the numbers of Form 700 and FGR filers. To ensure consistency with the City's annual filing requirements, the City Clerk's Office should regularly compare the lists of annual Form 700 filers and FGR filers and reconcile any differences.

Recommendation #3: To ensure consistency with annual filing requirements, the City Clerk's Office should:

- a) Regularly compare the numbers of annual Form 700 filers and Family Gift Report filers and reconcile any differences.**
- b) Document expectations for department liaisons that annual filers be notified of requirements to file a Family Gift Report.**

Finding 2 The City Can Improve Processes for Ensuring Consultants File Required Form 700s

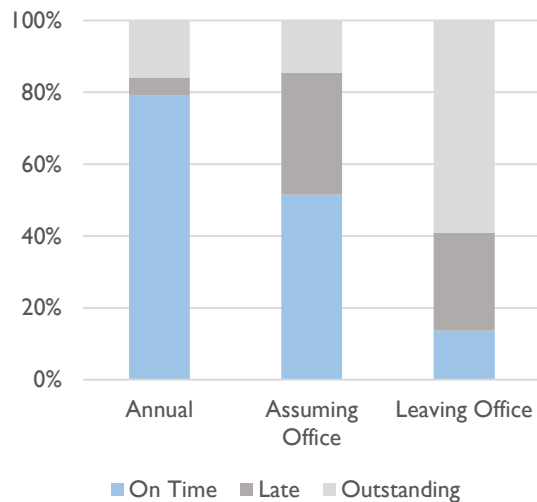
Summary

The City faces challenges in getting consultants to file Form 700s, with filing rates below that of employees and B&C filers. The filing rate for all consultant filings was 83 percent, with leaving office filings under 50 percent. Overall, there is a lack of consensus across departments in how to enforce Form 700 compliance. In 2018, the City potentially paid over \$1 million to three consulting firms with outstanding Form 700s. We recommend that the Administration clarify responsibilities in the Form 700 compliance process as it develops Citywide guidelines on contract management. Moreover, to make it easier for the City to notify consultants of their obligation to file, the City should update its contract templates to provide fields for consultant *business* emails and should separately collect alternative *personal* email addresses from consultants to follow up on leaving office statements.

Challenges in Identifying and Following Up On Consultant Filings

For 2018, consultants had an overall filing rate of 83 percent, lower than employees and B&C filers. In other words, nearly 1 in 5 required filings were not submitted. Of the three types of filings (annual, assuming office, and leaving office), the filing rate for consultant leaving office filings was the lowest, at just 41 percent.

Exhibit 1 I: Consultants Had Lower Filing Compliance Than Other Filers¹⁸



Source: Auditor analysis of SouthTech reports as of May 20, 2019

¹⁸ For consultants, there were 347 annual, 192 assuming office, and 22 leaving office statements due.

Clarifying Roles Among Staff Can Improve Form 700 Compliance

Citywide challenges in contract compliance, as described in previous audits, extend to Form 700 filings.¹⁹ For consultant agreements requiring Form 700s, the requirement is embedded in the standard contract template:

In accordance with the California Political Reform Act (Government Code Section 81000 et seq.), the Consultant shall cause each person performing services under this Agreement, and identified as having to file a Form 700 to do each of the following:

- *Disclose the categories of economic interests in Form 700 as required by the Director;*
- *Complete and file the Form 700 no later than 30 calendar days after the person begins performing services under this Agreement and all subsequent Form 700s in conformance with the requirements specified in the California Political Reform Act; and*
- *File the original Form 700 with the City's Clerk with a copy submitted to the Director.*

Departments have differing perceptions on how to enforce Form 700 compliance. The City Clerk's Office, for instance, believes that it is the Finance Department's duty to check if a contract has outstanding filers in the City's contract database before issuing payment for services.²⁰ If the contract is flagged as "Pending Form 700", the City Clerk's Office expects Finance to withhold payment.

Finance, on the other hand, believes that it is each department's responsibility to review whether contracts have met the filing requirement. Finance reviews the accounting entry and confirms that a proper invoice and other backup documentation is included. Departments vary on how actively they enforce Form 700 requirements. For example, one project manager reported that they withhold payments while another reported that they do not.

Meanwhile, some departments do not update SouthTech directly while others do. In addition, department liaisons are not always aware when consultant turnover occurs, because they do not usually interface with consultants. This situation can hamper them from initiating the leaving office filing process in a timely manner, as project managers and other City staff do not always promptly inform liaisons of

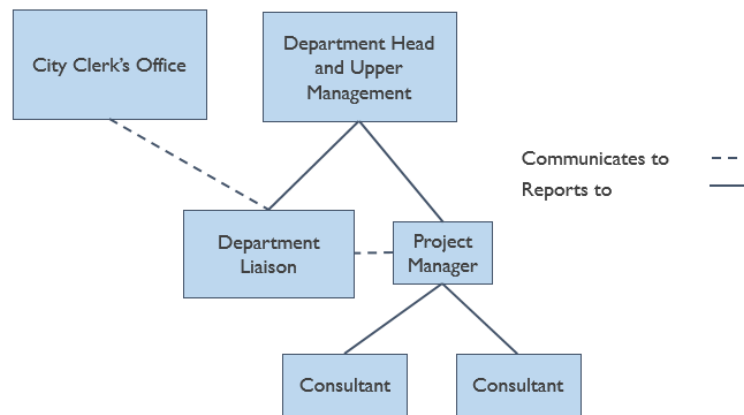
¹⁹ For example, see *Consulting Agreements: Better Enforcement of Procurement Rules, Monitoring, and Transparency is Needed* (<http://www.sanjoseca.gov/DocumentCenter/View/18349>).

²⁰ The contract database is named GILES and is available on the City Clerk's website (<https://records.sanjoseca.gov/Pages/Search.aspx>).

consultant staffing changes.²¹ Only 14 percent of consultant leaving office filings were submitted on time. Late filings were submitted an average of 162 days after leaving office, later than the 30 days mandated by the Act.

The misalignment in expectations across departments has led to the City paying firms that were not in compliance with Form 700 contract requirements. Our analysis identified potentially over \$1 million in payments in 2018 that may have been made to three firms with outstanding Form 700s.

Exhibit 12: Coordination Is Required to Ensure Compliance of Consultant Filers



Source: Auditor analysis based on interviews with City staff.

Collecting Alternative Email Addresses Can Improve Leaving Office Filing Rates For Consultants

As noted earlier in this Finding, consultant leaving office Form 700s had the lowest filing rate of all filing categories at 41 percent. On top of not receiving timely updates on consultant turnover, department liaisons are not always able to follow up immediately with consultants due to a lack of contact information. When they leave office, consultants sometimes not only stop working for the City but for the firm altogether, so that the City is no longer able to use the consultant’s business email address to contact them. When this happens, City staff attempt to obtain consultants’ personal contact information by reaching out to the firm or using social media. Requiring that consultants provide alternative or personal email addresses, in addition to their business email addresses, can allow the City to follow-up on consultants who leave their firms.

In our 2013 audit, we recommended that the City develop policies and procedures on contract monitoring and management, which include establishing a standardized

²¹ It should be noted that project managers also may not always be aware of turnover, since they may only communicate with the consultant contract manager, though they are in the best position to monitor staffing changes.

contract management process. The Administration should integrate Form 700 compliance into its work on contract management, which will involve creating consistent procedures around enforcing requirements and collecting alternative email addresses.

Recommendation #4: The Administration, as it develops Citywide guidelines on contract management, should clarify responsibilities for consultant Form 700 filing compliance, including:

- a) **Coordinating with the City Clerk’s Office to ensure all consultants are appropriately identified in the e-filing system,**
- b) **Verifying that consultants meet all filing requirements and following up with non-filers, and**
- c) **Collecting alternative/personal email addresses to facilitate follow-up for consultant leaving office filings.**

Updating the Standard Consultant Contract Template May Help to Notify Consultants of Their Filing Responsibilities

Consultant filers across all types of filings have the lowest filing rate compared to employee and B&C filers. This is partially due to the lack of fields for the emails of all consultants in Attachment B of the City’s service order template, which is shown in Exhibit 13.²² The template contains an email field for the contract manager (circled), but not for consultants under “Other Staffing,” though they may have to file as well. Without adequate contact information, the City Clerk’s Office cannot promptly notify consultants of their filing requirements or provide them access to log into the e-filing portal.

²² For the City’s consultant agreements, consultant staffing information is contained in the Attachment B of each service order under a Master Consultant Agreement and in Subsection 6.1 of a Standard Consultant Agreement.

Exhibit 13: Attachment B of an Example Service Order

Attachment B: Terms and Conditions

1. **City's Contract Manager:** The City's contract manager for this Approved Service Order is:

| | |
|-------------|------------|
| Name: | Phone No.: |
| Department: | E-mail: |
| Address: | |

2. **Consultant's Contract Manager and Other Staffing:** Identified below are the following: (a) the Consultant's contract manager for this Approved Service Order, and (b) the Consultant(s) and/or employee(s) of the Consultant who will be principally responsible for providing the services and deliverables. *If an individual identified below does not have a current Form 700 on file with the City Clerk for a separate agreement with the City, and is required to file a Form 700, the Consultant must comply with the requirements of Subsection 17.2 of the Master Agreement, entitled "Filing Form 700."*

| <u>Consultant's Contract Manager</u> | | <u>Required to File Form 700?</u> | | |
|--------------------------------------|-------------|--------------------------------------|---------------------|----|
| | | Yes Already Filed (Date Filed) | Yes Need to File | No |
| Name: | Phone No.: | | | |
| Address: | E-mail: | | | |
| <u>Other Staffing</u> | | | | |
| Name: | Assignment: | | | |
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |

Source: Master Consultant Agreement Approved Service Order Template

Currently, to find these emails, the City Clerk's Office asks City staff who work with the consultants, reach out to the firm directly, or guess the email based on the pattern of the consultant's contract manager email address (an approach that is not always accurate). Modifying templates to add email fields for the business emails of each consultant filer and ensuring that these fields are completed upon initiation of the contract or service order could help increase filing rates among consultants.

Recommendation #5: The City Attorney's Office should modify relevant sections of the standard consulting agreement templates to include a business email address for each consultant filer listed.

This page was intentionally left blank

Finding 3 Better Guidance to Ensure Form 700s Are Complete and Reviewed for Potential Conflicts

Summary

The City can take steps to ensure the correctness and completeness of Form 700s, as well as proactively review filings for potential conflicts of interest. While the e-filing portal has some informational resources available, several filers have expressed that they still find the process confusing. The City Clerk's Office can improve access to additional resources from the FPPC that can help address questions filers have about filing, as well as strengthen the review of filings for completeness. Finally, the City can establish guidelines and procedures to review employee filings for potential conflicts of interest.

Ensuring Form 700s Are Completed Correctly Can Support Transparency and Accountability

The purpose of the Form 700 is to support transparency and accountability in state and local governments by providing "*necessary information to the public about an official's personal financial interests.*" This can only occur if the forms are completed accurately and contain all relevant interests.

Additional Guidance for Filers Can Ensure They Understand Their Filing Responsibilities

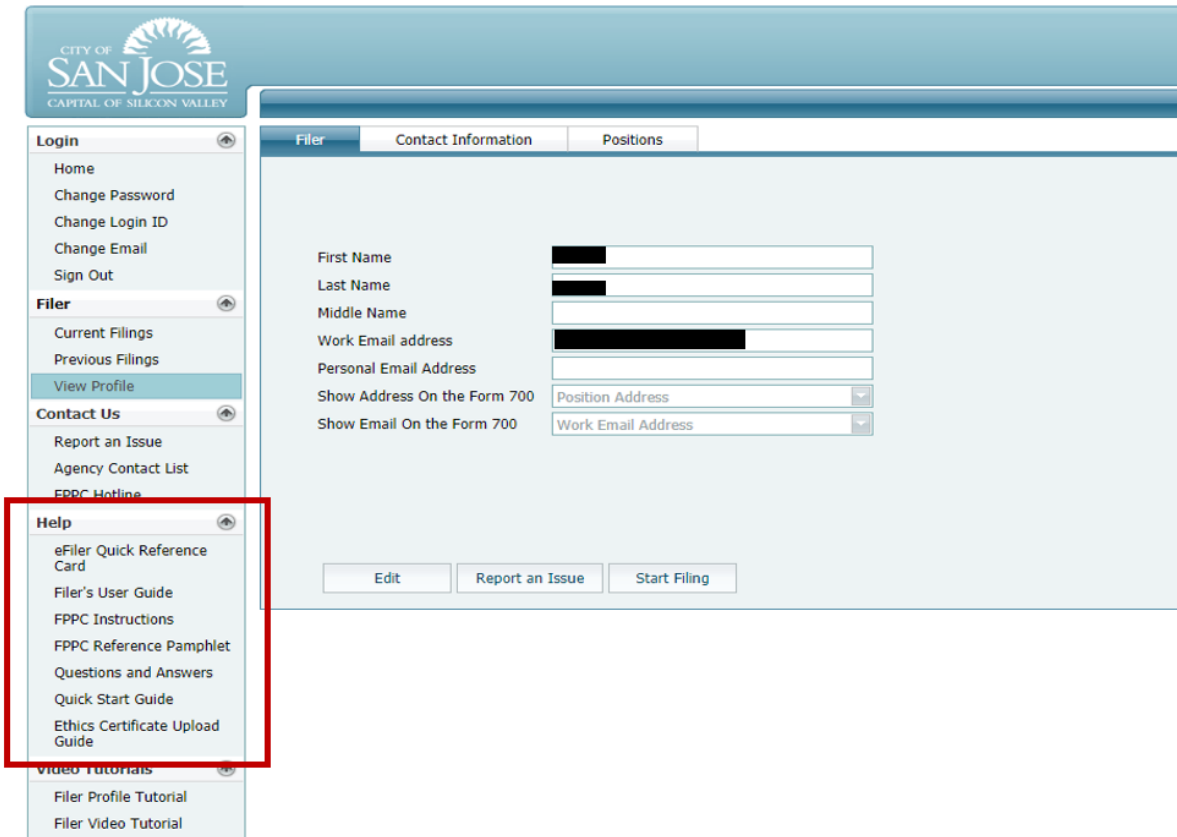
Despite generally positive feedback from filers, some found completing Form 700s to be a confusing task. Comments from a survey conducted through SouthTech expressed the need for more guidance in completing the forms, specifically with regards to the reporting requirements of each schedule. Filers sometimes direct their questions to Clerk staff. However, because City staff cannot offer legal advice, they usually refer filers to the FPPC.

Completing a Form 700 requires familiarity with what the FPPC considers to be "reportable interests," which include individual stocks, sole proprietorships, rental property within a jurisdiction, and gifts from businesses. Non-reportable interests, on the other hand, include holdings in diversified mutual funds, annuities, personal residences, and gifts from family members. Because of variation in individuals' economic circumstances, determining whether an interest is reportable may not always be straightforward.

Some information on reportable interests can be found on a side menu of the SouthTech filing portal, as shown in Exhibit 14. Listed there are general filing instructions, an FPPC "Reference Pamphlet," and a "Quick Start Guide" for Form

700s. The City Clerk’s Office has similar resources on its website, as well as a link to the Form 700 Homepage and the phone number of the FPPC advice line.

Exhibit I4: SouthTech Filer Portal



Source: Auditor screenshot of SouthTech e-filing portal.

While helpful for providing broad context, these resources do not describe how to complete each schedule. Moreover, the advice phone number has limited hours (Monday through Thursday, 9 AM to 11:30 AM). Posting the official FPPC Form 700 filing instructions, which provides detailed information about each schedule, on the City Clerk’s website and the SouthTech portal can improve filer knowledge on how to accurately complete a Form 700. Also, noting the hours of the FFPC’s helpline, listing the agency’s contact email, and providing a direct link to the agency’s Advice Page can inform filers of the multiple ways they can obtain advice for their unique circumstances.²³

²³ In addition to print resources, the FPPC offers ways to obtain advice on completing Form 700s. Filers may email or call the agency for informal advice, as well as request formal legal advice from the FPPC’s staff attorneys or the full Commission.

Recommendation #6: On its website and the e-filing portal, the City Clerk's Office should:

- a) Post the FPPC's Official Form 700 Filing Instructions,**
- b) Provide a direct link to the FPPC's Advice Page, and**
- c) Add text noting the limited hours of the FPPC's helpline and add the FPPC's advice email address.**

The City Clerk's Office Can Improve its Processes for Reviewing Filings for Completeness

The FPPC requires filing officers to conduct a facial review of all filings submitted as well as a full review of 20 percent of all timely filings and all late filings.²⁴ SouthTech automatically validates electronic filings to ensure that filings are complete in accordance with FPPC guidelines. In our review of electronic filings, all required fields were complete, indicating that this feature is working.

The system, however, cannot validate manual filings, which must be uploaded to SouthTech. Instead, the City Clerk's Office must review them individually to ensure that all appropriate fields are completed. In our review of submitted manual filings that were due in 2019, 24 (46 percent) did not pass facial review and 12 (57 percent) of filings with schedules did not pass full review.²⁵ As noted in the Background of this report, manual filings constituted just 4 percent of all submitted filings that were due in 2019.

When a required field is omitted on a Form 700, the filing officer should request that the filer complete an amendment. Common reasons for filing amendments include:

- Schedule summary on the cover page left blank and no schedules are attached
- Fair market value or gross income of an investment not reported
- Source of a gift not reported

²⁴ In a facial review, the reviewer checks the cover page of the filing to ensure the information is complete and accurate. It involves checking the name and address of the filer, the period covered, type of statement, summary section, and signature, along with confirming that all the appropriate schedules are attached. Full reviews involve checking the completeness of schedules. The review requirements are specified in the FPPC's "Filing Officer Informational Fact Sheet" for 2019.

²⁵ The total number of manual filings reviewed (58) is lower than the total number of 65 manual filings submitted because we excluded amendments (which do not have a formal deadline), and instances in which the same filing was uploaded to fulfill more than one filing requirement (e.g., as both a leaving office and annual filing).

Examples of errors found on the coversheets of manual filings included having more than one form type checked (e.g., Annual and Assuming), not specifying a position (e.g., leaving it blank or listing "Consultant" instead of a firm name), and not attaching specified schedules.

- Type of travel payment (gift or income) not reported

While the filing officer is not required to conduct investigations to confirm the accuracy of a filer's reporting, if they become aware of an item that should have been reported on a filing, they should request an amendment by the filer. SouthTech has a feature that creates amendment requests, which the Clerk can then send to filers.

Recommendation #7: The City Clerk's Office should develop procedures for the review of Form 700s, in accordance with the Political Reform Act and FPPC regulations, and the use of the e-filing system to facilitate amendment requests.

The City Could Proactively Review Employee Filings for Potential Conflicts of Interest

Although City policy places responsibility for avoiding conflicts of interest on the individual, there are opportunities for departments to undertake a review of employee Form 700s for potential conflicts of interest.

The general rule in the City's Code of Ethics (City Policy 1.2.1) is that employees and officials must recuse themselves from decisions that can affect their personal financial interests and to avoid even the *appearance* of a conflict of interest. The Code of Ethics reiterates that designated employees must file appropriate disclosures (i.e., Form 700s), as required by state law.

The City has a conflict of Interest policy for the procurement and contract processes (City Policy 5.1.1), which requires all involved parties to complete a dedicated conflict of interest form (distinct from the state's Form 700). The authorized official reviews these forms and, after discussing with the City Attorney's Office, makes a determination as to whether any potential conflicts exist.²⁶

Two City departments currently have a process in which at least one supervisory staff person reviews all department Form 700s for potential conflicts of interest. In one department, staff review Form 700s for businesses either owned or heavily invested in by the department's employee filers. They compile a list of these businesses for reference by department staff who are responsible for approving expenditures or procurements.

The purpose of this is to ensure that purchases from businesses owned or partially owned by City employees are made fairly and competitively, in accordance with City policy. However, department staff had expressed concern that if they came

²⁶ The Policy exempts certain competitive processes from the conflicts review procedures: contracts valued below \$100,000, disposal of surplus City property, and grant awards below \$10,000.

across an employee's potential conflict during this review, they were unsure how to proceed appropriately.

Additional Review Can Avoid Potential Conflicts of Interest from Occurring

Because of the self-reporting nature of the Form 700, identifying conflicts of interest and recusing oneself from decisions is largely an honor system. Having a separate, proactive review of employees' disclosures can help ensure potential conflicts do not go unnoticed or unaddressed.

The e-filing system has the capability to run reports that identify filers with reportable interests on their Form 700 (e.g., all filers who disclosed an outside business interest). The City Clerk's Office can use this capability to make such reports available to department heads and Form 700 liaisons. The liaisons can then distribute the information to relevant managers or supervisors for review. Reports from the e-filing system showed that about 30 percent of employee filers had reportable interests in 2018, or about 340 employees across 22 departments.

Further, the Administration, in consultation with the City Attorney's Office, should develop guidance or policies to ensure department managers or supervisors can use Form 700s to appropriately identify possible conflicts and address them as needed.

Recommendation #8: The City Clerk's Office should generate reports from the e-filing system identifying employees with reportable interests, and provide to department liaisons and department heads for appropriate review.

Recommendation #9: The Administration, in consultation with the City Attorney's Office, should develop guidance for departments to review employee Form 700s for potential conflicts of interest.

This page was intentionally left blank

Conclusion

Most designated City employees and board and commission members submitted Form 700s for the 2018 filing year, as required. The City, however, can enhance its processes to increase the timeliness and completeness of filings. Standardizing procedures and expectations around how to identify all filers and follow up with non-compliant ones, as well as clarifying responsibilities around consultant Form 700s, can strengthen the City's compliance with laws and regulations. Meanwhile, the Administration and the City Clerk's Office can provide greater guidance to departments and filers in completing forms and reviewing them for potential conflicts of interest. By implementing these recommendations, the City can ensure that Form 700s perform more effectively the purpose for which they were intended: to ensure transparency and accountability in the government.

RECOMMENDATIONS

Finding 1: Most Filers Submitted Form 700s as Required, But the City Can Improve the Timeliness of Filings

Recommendation #1: To help streamline the City's process of identifying Form 700 filers, the City Clerk's Office should reestablish regular department liaison meetings and:

- a) Update and document expectations for department liaisons regarding entering employee assuming and leaving office information into the e-filing system; and/or
- b) Work with the Human Resources and Information Technology Departments and the e-filing system vendor to automate the process for updating employee information.

Recommendation #2: The City Clerk's Office should establish standard procedures surrounding the assessment of late fines and referral of non-filers to the Fair Political Practices Commission (FPPC). The procedures should include using its e-filing system to track follow up activities, such as assessing late fines and sending non-filing notices.

Recommendation #3: To ensure consistency with annual filing requirements, the City Clerk's Office should:

- a) Regularly compare the numbers of annual Form 700 filers and Family Gift Report filers and reconcile any differences.
- b) Document expectations for department liaisons that annual filers be notified of requirements to file a Family Gift Report.

Finding 2: The City Can Improve Processes for Ensuring Consultants File Required Form 700s

Recommendation #4: The Administration, as it develops Citywide guidelines on contract management, should clarify responsibilities for consultant Form 700 filing compliance, including:

- a) Coordinating with the City Clerk's Office to ensure all consultants are appropriately identified in the e-filing system,

- b) Verifying that consultants meet all filing requirements and following up with non-filers, and
- c) Collecting alternative/personal email addresses to facilitate follow-up for consultant leaving office filings.

Recommendation #5: The City Attorney's Office should modify relevant sections of the standard consulting agreement templates to include a business email address for each consultant filer listed.

Finding 3: Better Guidance to Ensure Form 700s Are Complete and Reviewed for Potential Conflicts

Recommendation #6: On its website and the e-filing portal, the City Clerk's Office should:

- a) Post the FPPC's Official Form 700 Filing Instructions,
- b) Provide a direct link to the FPPC's Advice Page, and
- c) Add text noting the limited hours of the FPPC's helpline and add the FPPC's advice email address.

Recommendation #7: The City Clerk's Office should develop procedures for the review of Form 700s, in accordance with the Political Reform Act and FPPC regulations, and the use of the e-filing system to facilitate amendment requests.

Recommendation #8: The City Clerk's Office should generate reports from the e-filing system identifying employees with reportable interests, and provide to department liaisons and department heads for appropriate review.

Recommendation #9: The Administration, in consultation with the City Attorney's Office, should develop guidance for departments to review employee Form 700s for potential conflicts of interest.

Audit Objective, Scope, and Methodology

The objective of our audit was to review the filing status for Form 700 filers in the City. To understand management controls around Form 700 filings and meet our audit objectives, we did the following:

- Reviewed relevant sections in the municipal code and City policies on ethics, gifts, procurement, and conflicts of interest
 - City Gift Ordinance (Municipal Code 12.08)
 - Procurement and Contract Process Integrity and Conflict of Interest – Administrative Procedures (City Policy Manual 5.1.1)
 - Code of Ethics (City Policy Manual 1.2.1)
- Compared the City's current and past conflict of interest codes
- Interviewed FPPC staff and reviewed the Political Reform Act, FPPC regulations and resources, informal legal advice, and official opinions from the FPPC
- Reviewed the City's current contract with SouthTech systems and interviewed a representative from SouthTech to better understand the e-filing system's capabilities
- Determined accuracy of filers identified in SouthTech by comparing its data to PeopleSoft and the City Clerk's roster of Board and Commission members
- Assessed data from SouthTech for filing rates and patterns, amendment requests, and reportable interests
 - Annual Form 700s and Family Gift Reports reviewed cover calendar year 2018 and were due in April 2019
 - Assuming office and leaving office Form 700s reviewed were for filers who had assumed or left office between January 1, 2018 and December 31, 2018 (due dates between January 31, 2018 and January 30, 2019)
- Analyzed feedback from a survey conducted through SouthTech. Since January 2018, the survey received 228 comments, 66 percent of which are from City employees and 17 percent each from board and commission members and consultants
- Reviewed a sample of electronic and manual filings for completeness
- Compared consultant filing data in GILES, the City's contract database, with actual contracts to determine reliability of Form 700 requirements identified in GILES

- Identified contract payments made in 2018 to contracts with outstanding filings based on data from GILES, SouthTech, and Financial Management System (FMS)
- Reviewed former resources and training materials provided by the City Clerk's Office to department Form 700 liaisons
- Interviewed former and current City Clerk staff to understand internal processes and procedures around Form 700 filings
- Interviewed department liaisons and project managers from the IT Department; Public Works Department; Police Department; Environmental Services Department; the Department of Planning, Building, and Code Enforcement; Auditor's Office; and the Fire Department
- Benchmarked Form 700 practices and resources with other jurisdictions, including the City of Monterey and the Los Angeles Unified School District
- Reviewed prior audits related to Form 700s and contract compliance, as well as audits from other jurisdictions

APPENDIX A

Cover Page, Statement of Economic Interests (Form 700)

| | | | | |
|--|--|--|-------|----------|
| CALIFORNIA FORM 700 FAIR POLITICAL PRACTICES COMMISSION | STATEMENT OF ECONOMIC INTERESTS | Date Initial Filing Received <small>Official Use Only</small> | | |
| COVER PAGE | | | | |
| <i>A PUBLIC DOCUMENT</i> | | | | |
| <small>Please type or print in ink.</small> | | | | |
| NAME OF FILER (LAST) | (FIRST) | (MIDDLE) | | |
| _____ | | | | |
| 1. Office, Agency, or Court | | | | |
| Agency Name (Do not use acronyms) | | | | |
| _____ | | | | |
| Division, Board, Department, District, if applicable | Your Position | | | |
| _____ | _____ | | | |
| ▶ If filing for multiple positions, list below or on an attachment. (Do not use acronyms) | | | | |
| Agency: _____ | Position: _____ | | | |
| 2. Jurisdiction of Office (Check at least one box) | | | | |
| <input type="checkbox"/> State | <input type="checkbox"/> Judge or Court Commissioner (Statewide Jurisdiction) | | | |
| <input type="checkbox"/> Multi-County _____ | <input type="checkbox"/> County of _____ | | | |
| <input type="checkbox"/> City of _____ | <input type="checkbox"/> Other _____ | | | |
| 3. Type of Statement (Check at least one box) | | | | |
| <input type="checkbox"/> Annual: The period covered is January 1, 2018, through December 31, 2018. | <input type="checkbox"/> Leaving Office: Date Left _____ <small>(Check one circle.)</small> | | | |
| -or- The period covered is _____, through December 31, 2018. | <input type="radio"/> The period covered is January 1, 2018, through the date of leaving office. | | | |
| <input type="checkbox"/> Assuming Office: Date assumed _____ | <input type="radio"/> The period covered is _____, through the date of leaving office. | | | |
| <input type="checkbox"/> Candidate: Date of Election _____ and office sought, if different than Part 1: _____ | | | | |
| 4. Schedule Summary (must complete) ▶ Total number of pages including this cover page: _____ | | | | |
| Schedules attached | | | | |
| <input type="checkbox"/> Schedule A-1 - Investments - schedule attached | <input type="checkbox"/> Schedule C - Income, Loans, & Business Positions - schedule attached | | | |
| <input type="checkbox"/> Schedule A-2 - Investments - schedule attached | <input type="checkbox"/> Schedule D - Income - Gifts - schedule attached | | | |
| <input type="checkbox"/> Schedule B - Real Property - schedule attached | <input type="checkbox"/> Schedule E - Income - Gifts - Travel Payments - schedule attached | | | |
| -or- <input type="checkbox"/> None - No reportable interests on any schedule | | | | |
| 5. Verification | | | | |
| MAILING ADDRESS | STREET | CITY | STATE | ZIP CODE |
| <small>(Business or Agency Address Recommended - Public Document)</small> | | | | |
| _____ | | _____ | _____ | _____ |
| DAYTIME TELEPHONE NUMBER | | EMAIL 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 _____ | Signature _____ | | | |
| <small>(month, day, year)</small> | <small>(File the originally signed paper statement with your filing official.)</small> | | | |

Source: FPPC Form 700 website

This page was intentionally left blank

APPENDIX B

City of San José Family Gift Reporting Form



CITY OF SAN JOSÉ, CALIFORNIA

Office of the City Clerk
 200 East Santa Clara Street,
 14th Floor
 San José, California 95113
 Telephone 1 (408) 535-1261 FAX
 1 (408) 292-6207

ANNUAL FAMILY GIFT REPORTING FORM

Pursuant to the City's Gift Ordinance, Chapter 12.08 of the San Jose Municipal Code, all officers and designated employees of the City and its Successor Agency to the Redevelopment Agency must file this form with the City, 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 ONE

- To my knowledge there are no reportable gifts.
- The following are reportable gifts:

PLEASE LIST EACH GIFT SEPARATELY

| DATE | RECIPIENT | 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. 6/4/15)

Source: San José City Clerk's Office website

This page was intentionally left blank

TO: JOSEPH ROIS
CITY AUDITOR

FROM: TONI J. TABER
CITY CLERK

**SUBJECT: RESPONSE TO THE AUDIT OF
FORM 700s**

DATE: August 6, 2019

BACKGROUND

The Office of the City Clerk appreciates the City Auditor's work on evaluating the Form 700 process. The City Clerk has reviewed the Audit of Open Government and is in overall agreement with the recommendations identified in the report. The following are the Office of the City Clerk and Administration responses to each recommendation.

RECOMMENDATIONS AND RESPONSE

Recommendation 1: To help streamline the City's process of identifying Form 700 filers, the City Clerk's Office should reestablish regular department liaisons meetings and:

- a) Update and document expectations for department liaisons regarding entering employee assuming and leaving office information into the e-filing system; and/or**
- b) Work with the Human Resources and Information Technology Departments and the e-filing system vendor to automate the process for updating employee information.**

Office of the City Clerk Response to Recommendation #1:

The City Clerk agrees with this recommendation and towards part (a) has scheduled a training for Form 700 department liaisons for September 2019. Regarding part (b) the Office of the City Clerk will work with the e-filing system vendor to see what solutions they may have. Fulfilment of part (b) would be contingent on cost and budgeting.

Recommendation 2: The City Clerk's Office should establish standard procedures surrounding the assessment of late fines and referral of non-filers to the Fair Political Practices Commission (FPPC). The procedures should include using its e-filing system to track follow up activities, such as assessing late fines and sending non-filing notices.

Office of the City Clerk Response to Recommendation #2:

The Office of the City Clerk agrees with this recommendation and is currently working with the vendor to better utilize the e-filing system to assess late fines, send non-filing notices, and refer

non-compliant filers to the FPPC. In 2019, the first non-filing notice as required by State Law has been sent using the system.

Recommendation 3: To ensure consistency with annual filing requirements, the City Clerk's Office should:

- a) Regularly compare the numbers of annual Form 700 filers and Family Gift Report filers and reconcile any differences.**
- b) Document expectations for department liaisons that annual filers be notified of requirements to file a Family Gift Report.**

Office of the City Clerk Response to Recommendation #3:

The Office of the City Clerk worked with the vendor to correct those employee positions which were not included in the Family Gift Report (FGR) filing requirement. These corrections were made for all future filers in all employee positions. When new positions are created in the system, the Office of the City Clerk will ensure those are correctly designated as FGR filers.

Recommendation 4: The Administration, as it develops Citywide guidelines on contract management, should clarify responsibilities for consultant Form 700 filing compliance, including:

- a) Coordinating with the City Clerk's Office to ensure all consultants are appropriately identified in the e-filing system,**
- b) Verifying that consultants meet all filing requirements and following up with non-filers, and**
- c) Collecting alternative/personal email addresses to facilitate follow-up for consultant leaving office filings.**

Office of the City Clerk Response to Recommendation #4

The Office of the City Clerk agrees with this recommendation. The consultant Form 700 has continued to be the biggest challenge with the Form 700 State requirements. Currently, identifying those who must file assuming office is clear as the names are usually included in the contract. However, the Office of the City Clerk is not notified when those identified in the contract leave the company. This leads to low compliance rates with leaving office filings and annual filings. Because the filer uses a company email and a company mailing address, once they leave the company, they no longer receive any notices. The Office of the City Clerk is working with the departments to identify how this gap can be filled.

Administration Response to Recommendation #4

The Administration is in the final stages of executing a Service Order to evaluate the current processes used by various City departments procuring consulting agreements, and identify best

practices to inform new and/or updated policies and procedures. Included in this evaluation are documenting how departments determine whether a new consultant is a Form 700 filer, and an inventory of current practices used by departments to establish and monitor consulting contracts and Form 700 filers. The initial evaluation will begin in August 2019 and be completed by March 2020.

Recommendation 5: The City Attorney's Office should modify relevant sections of the standard consulting agreement templates to include a business email address for each consultant filer listed.

Office of the City Clerk Response to Recommendation #5:

The City Attorney's Office has plans to modify the standard consulting agreement template later this year to include a business email address for each consultant filer listed.

Recommendation 6: On its website and the e-filing portal, the City Clerk's Office should: Post the FPPC's Official Form 700 Filing Instructions, Provide a direct link to the FPPC's Advice Page, and Add text noting the limited hours of the FPPC's helpline and add the FPPC's advice email address.

Office of the City Clerk Response to Recommendation #6:

While links to the FPPC website are included on the City Clerk webpage and within the e-filing vendor's webpage, the Office of the City Clerk will revise the webpage during the upcoming website conversion process to make those links more clear.

Recommendation 7: The City Clerk's Office should develop procedures for the review of Form 700s, in accordance with the Political Reform Act and FPPC regulations, and the use of the e-filing system to facilitate amendment requests.

Office of the City Clerk Response to Recommendation #7:

The Office of the City Clerk agrees with this recommendation as written procedures assists with employee turnover. As there is a new staff person handling Form 700s, procedures are being written and/or updated as the new staff person trains.

Recommendation 8: The City Clerk's Office should generate reports from the e-filing system identifying employees with reportable interests, and provide to department liaisons and department heads for appropriate review.

Office of the City Clerk Response to Recommendation #8:

The Office of the City Clerk agrees with this recommendation. We have already worked with the e-filing vendor to generate an appropriate report which department liaisons will be able to generate at any time.


Recommendation 9: The Administration, in consultation with the City Attorney's Office, should develop guidance for departments to review employee Form 700s for potential conflicts of interest

Administration Response to Recommendation #9:

The Administration is working with the City Attorney's Office to develop a process to utilize reports generated within the e-filing system to perform periodic review of potential conflicts of interest.

CONCLUSION

The Audit Report provides recommendations to support the proper reporting requirements of Conflicts of Interest within the City of San José. The Office of the City Clerk and the Administration values these recommendations for opportunities to improve. We would like to thank the City Auditor and staff for this operational review.



TONI J. TABER, CMC
City Clerk