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April 24, 2013

Chair Ann Ravel and Commissioners
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

RE: Agenda Item 28; Regulation 18700
("Basic Conflict of Interest Rule")

Dear Chair Ravel and Commissioners:

As chair of the League of California Cities City Attorneys Department FPPC Committee, I submit this letter for comment on the above-referenced agenda item. The Committee supports the efforts of the Commission to clarify the existing conflict of interest regulations and remains committed to lending our assistance in this effort. These comments provided are offered in that spirit.

The Regulation Clarification Project- Conflicts of Interest

The FPPC is engaged in an ongoing effort to clarify the regulations adopted by the Commission to implement the Political Reform Act. The Commission has substantially completed a revision of the series of regulations on "gifts" to public officials, and staff has now turned to the series addressing the determination of when a public official has a disqualifying conflict of interest in a particular government decision.

Several years ago, the Commission substantially revised the conflict of interest regulations to establish an 8-Step process for determining whether a public official has a disqualifying conflict of interest. This approach was well received by city attorneys as it greatly assisted them in systematically approaching these questions, and in spotting the issues that need to be resolved. Staff has developed a 4-Step process that would replace the 8-Step approach. The regulation offered for your consideration would (1) introduce the basic conflict of interest rule, (2) define key terms that are used in the conflict regulations, and (3) provides an overview of the four steps for determining whether an official is disqualified from participation in a governmental decision.

In general, our Committee supports the proposed regulation. The proposed regulation places "steps" that were primarily questions of definition into a definitions section, and focuses the new 4 steps on the core concepts that need to be addressed in the factual development and analysis. While we believe the 8-Step process served the regulated

community well when compared to the previous regulatory scheme, we also believe the proposed 4-Step process offers useful improvement.

While we support the overall approach staff has proposed, we would offer one minor revision. In Step One, the regulation asks: "[w]ill the governmental decision have a reasonably foreseeable financial effect on any of the public official's financial interests?" This question suggests that in order for a conflict of interest to be present, it is necessary that the decision *will* have a financial effect on one of the official's financial interests. However, we know that this is not the case. An official may not participate in a decision when it is foreseeable that their interests will be affected by the decision, even if their interests are ultimately not affected by the decision. We would suggest revising the question to read as follows:

"Is it reasonably foreseeable that the governmental decision will have a financial effect on any of the public official's financial interests?"

Before closing, our committee seeks one clarification. It is our understanding that the proposed regulation is intended to serve as an introduction to the conflict series that defines key terms and provides an overview of the 4-step process for addressing conflict issues. As such, we understand that in some cases staff has merely rearranged existing regulatory language (for example, the language defining when a body possesses decision-making authority on page 4, lines 6-18), and has not yet determined that the existing language will remain unchanged when the clarification of these regulations is completed. Our understanding is that issues such as the decision-making authority of commissions and committees is open for further discussion as staff evaluates the other conflict regulations, and that if subsequent changes are made, this regulation will be revised to reflect those changes.

Recommendation

In conclusion, our committee supports staff efforts to improve the conflict of interest regulations and recommends that the Commission adopt the proposed regulation with the minor amendment offered above.

I hope you find these comments helpful in your deliberations on this matter.

Sincerely,



Shawn M. Mason
City Attorney of San Mateo
Chair, League of California Cities
City Attorneys Department FPPC Committee

cc: Zackery P. Morazzini, General Counsel