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June 14, 2013

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

RE: Agenda Item 20: Real Property Conflicts of Interest

Dear Chair Ravel and Commissioners:

On behalf of the League of California Cities City Attorneys FPPC Committee, I submit this letter for comment on the above-referenced agenda item. The Committee has reviewed staff's background materials and offers the following comments for your consideration.

At the outset, I would commend Commission staff for its comprehensive report on the evolution of the FPPC's efforts to define disqualifying real property interests. In setting out to improve the current regulation it is helpful to understand what approaches have been used in the past, and what the limitations on those approaches have been.

In reviewing staff's report it appears to our committee that staff's conclusion is that in drafting a new and improved regulation, the Commission must choose between a "qualitative" approach and a "quantitative" standard. A qualitative approach would involve the development of a "reasonable person" standard, similar to the approach used to determine negligence in civil lawsuits. On the other hand, a quantitative approach establishes measureable thresholds to be applied to particular decisions. If the threshold is met or exceeded, the official has a disqualifying conflict of interest. As staff ably demonstrates each approach has been tried, and each has its limitations.

In reviewing these approaches, it was the unanimous view of the members of our committee that the quantitative approach currently used should continue to serve as the basis for this regulation. While we recognize the limitations of this approach identified in your staff's analysis, we believe the benefits of that approach outweigh these limitations.

As city attorneys we are often called upon to answer the question from a council member or planning commissioner "my home is X blocks from this project, can I participate in the hearing on it?" The current 500 foot rule provides a clear framework for addressing this question that lay officials can grasp. While the rule may not always make perfect sense

in its application, officials can appreciate the need to draw the line somewhere, and the 500 foot rule seems to work.

On the other hand, the adoption of a qualitative "reasonable person" standard would be problematic. If a council members asks whether they can vote on a particular application, they would not likely find satisfactory the answer that the can, so long as "a reasonable person would not find that it is reasonably foreseeable that the decision would have a material financial effect on the value of their home."

We encourage the Commission's ongoing efforts to update, clarify, and improve the Commission's conflict of interest regulations. We look forward to the Interested Persons meeting(s) staff intends to hold on the real property conflict regulation and sharing our perspective.

Thank you for your consideration. We hope you find these comments helpful in your deliberations.

Sincerely,

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