November 13, 2018

These comments are submitted by the League of California Cities' FPPC Committee of the City Attorneys' Department concerning proposed amendments to FPPC regulation 18702.2. Our committee is comprised exclusively of city attorneys who provide Political Reform Act guidance to public officials on a regular basis. We appreciate staff's work on the proposed amendments as the Political Reform Act provides the public with confidence in government decision-making.

We support the proposed amendments to the extent they create a bright-line presumption that a public official's interest in real property is immaterial if that property is located more than a certain distance from the property impacted by a proposed governmental decision. However, by setting that distance at 1,000 from the property subject to the decision, it still requires a complicated and subjective analysis for decisions involving properties located between 500 and 1,000 from an official's property.

Therefore, we recommend that the best approach would be to readopt the presumption that a public official's interest in real property is immaterial if that property is located more than 500 feet away from the property impacted by a proposed governmental decision. Section 18702.2 previously included this presumption, and it was effective for many years. However, it was removed when the section was amended in 2015.

A bright-line 500 foot rule has many advantages:

- It is an easy to explain rule that elected and appointed officials accept. 500 foot circles are drawn around their houses and other properties, and officials recuse themselves almost always without objection.
- While not perfect, the rule avoids most conflicts of interest.
- The public and the press understand the 500 foot rule.

We are concerned that, if the amendments are adopted in their current form, public lawyers will continue to have difficulty in advising public officials with any certainty related to decisions that may involve properties located between 500 and 1,000 feet from their property. The result would be that, almost every time a decision involves a property located between 500 and 1,000 feet from an official's property, the official would have to request advice from Commission staff.

Because Commission staff is very busy, many public lawyers have found that obtaining written advice from Commission staff (required within 500 feet of an official's property) is so time consuming as to be impractical in many instances. This results in elected officials unnecessarily recusing themselves on important local decisions when such recusal may not be required. While we understand you are not proposing to revisit the written advice requirement of the 500 foot rule at this time, we would urge you not to make the problem worse by introducing more uncertainty.

The Committee also requests that, when considering the proposed amendments, the following are addressed:

- We believe that there should be an "or" added to the end of new subsection (a)(8)(D). This is to make clear that any of the factors listed under subjection (a)(8), standing alone, would be considered a material effect, and that they do not all have to be triggered for an effect to be considered material.

- We believe that it is unnecessary to include the words "other than a decision identified in subdivision (a)(1) through (6)" in new subdivision (b).

- In order to rebut the presumption contained in new subdivision (b) there must be evidence that the decision would have an "obvious and substantial effect" on the official's parcel of real property. It would be helpful for there to be clarification added to the subdivision as to what is considered an "obvious and substantial effect."

Thank you very much for your consideration of these comments.