



April 20, 2023

Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811

Sent Via Email: [CommAsst@fppc.ca.gov](mailto:CommAsst@fppc.ca.gov)

**RE: Comment letter on April 21, 2023 Interested Persons Meeting, Section 84308 - Levine Act**

Dear Fair Political Practices Commission:

I write today on behalf of the FPPC Committee<sup>1</sup> of the City Attorneys Department of the League of California Cities (Cal Cities).<sup>2</sup> The FPPC Committee respectfully requests consideration of the following comments on the proposed new and amended regulations interpreting and implementing Government Code Section 84308<sup>3</sup> as the result of the passage of SB 1439 in 2022.

Cal Cities appreciates staff's work amending the proposed regulations since the FPPC's February meeting. However, there are several outstanding issues we encourage the FPPC to address to ensure the regulated community clearly understands the requirements of Section 84308. First, Cal Cities agrees with, and will not repeat, the comments submitted by the Counties of Santa Clara and Tulare. In addition, Cal Cities provides the following comments for your consideration.

**Regulation 18438 – Application of Government Code Section 84308**

The FPPC Committee suggests the former regulations be memorialized and made available to public officials on the FPPC's website, so public officials

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<sup>1</sup> The FPPC Committee is comprised of city attorneys who provide Political Reform Act guidance to public officials on a regular basis. Pursuant to the City Attorneys Department [bylaws](#), the Committee is responsible for monitoring FPPC proceedings and advising the FPPC of city concerns and practical implications of proposed policies.

<sup>2</sup> Cal Cities is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities monitors state and federal legislation of concern to cities and identifies legislation, including proposed rules and regulations, that have statewide significance.

<sup>3</sup> All future references to Section 84308 are to Government Code Section 84308.



understand their obligations with respect to contributions and proceedings that occurred in 2022.

### **Regulation 18438.1 - Officers and Agencies Under Government Code Section 84308**

Consistent with the definitions of "Officer" in Section 84308, subd. (a)(3)—which includes "any candidate for elective office in an agency"—and "Agency" in Section 84308, subd. (a)(3)—which excepts the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, and constitutional officers—Regulation 18438.1, subd. (d)(4) should be amended to read:

Have decisionmaking authority with respect to the proceeding involving a license, permit, or other entitlement for use and is also a candidate for elected office in an agency or has been a candidate for elected office in an agency in the 12 months prior to the proceeding.

### **Regulation 18438.2 – Proceedings Under Section 84308**

The FPPC Committee recommends Section 18438.2 be amended to specifically address appeals - i.e. does the mere possibility of an appeal under a city's municipal code make it reasonably foreseeable that it will come before the official or must an appeal be likely? If the latter, how does an official know that an appeal is likely?

In addition, the FPPC Committee recommends that Regulation 18438.2, subd. (b)(2) in both Option 1 and Option 2 be amended to clarify what is meant by: "The issue is otherwise within the jurisdiction of the agency for its determination...."

### **Regulation 18438.3 – Agents Under Section 84308**

The FPPC Committee is concerned that, in practice, public officials will not always be apprised of when a person is acting as an agent of a party or participant for compensation, making compliance impossible. The FPPC Committee believes there should be a requirement that agents identify themselves as such, i.e. make it clear when they are communicating on behalf of a party or participant.



### **Regulation 18438.5 – Aggregated Contributions Under Section 84308**

The FPPC Committee recommends Regulation 18438.5, subd. (a)(2)(B) be amended to read: “The period beginning on the date the party or principal first ~~retained~~ ~~employed~~ the agent as either a paid employee, contractor, or consultant.”

### **Regulation 18438.6 – Solicitation, Direction, and Receipt of Contributions Under Section 84308**

A comma should be added at the end of line 18 on page 1: " participant, and." As written, it looks like the remaining part of the sentence applies only to the participant/agent situation.

The FPPC Committee is unsure why the standards regarding an officer's involvement with an agent's request in Regulation 18438.6, subds. (b)(2) and (3) are different. Is there a reason to make one “at the direction” and the other “with the knowledge”?

### **18438.7 - Prohibitions and Disqualification Under Government Code Section 84308**

First, for consistency with Regulation 18438.7, subd. (a), the FPPC Committee believes Regulation 18438.7, subd. (a)(1) should be amended to read, “In determining whether facts revealed by a participant in written or oral ~~statements support or opposition~~ before the officer....”

Second, the FPPC Committee would like to highlight that Regulation 18438.7, subd. (a)(2) imposes a significant burden on public officials, particularly in light of their competing obligations to ensure compliance with the Ralph M. Brown Act and the privacy interests of participants. It is unclear how officials can concurrently comply with 18438.7, subd. (a)(2) as proposed and these existing legal obligations, particularly if participants or their agents choose not to disclose information.

Third, the FPPC Committee finds Regulation 18438.7, subd. (b)(1)(C)(2) to be confusing and circuitous. The rational basis for its inclusion is unclear.

Fourth, the FPPC Committee recommends amending Regulation 18438.7, subd. (c) to include a reference to the 30-day deadline for returning contributions.



Finally, in Regulation 18438.7, subd. (d)(2) "Upon" should be replaced with "After", given that an officer may know about a contribution before a meeting (for example, because of its inclusion on the agenda for the meeting) and immediate disclosure may not be possible.

### **Regulation 18438.8 – Disclosure Under Section 84308**

Recognizing that the text is not new, the FPPC Committee notes it is unclear what the last sentence in Regulation 18438.8(a) means: "If there is no public meeting, the disclosure shall be entered into the written record of the proceeding." Consider amending to something along the lines of: "If there is no public meeting, the disclosure shall be entered into the written record of the proceeding [or retained in the official project file.](#)"

In addition, the FPPC Committee notes that, as amended, Regulation 18438.8, subd. (b) is much broader than Section 84308. The FPPC Committee recommends the regulation be amended to better track the statute.

### **Regulation 18705 – Legally Required Participation**

Regulation 18705, sub. (b)(1)(B) should be amended to address the fact that public officials do not always have specific contribution information readily available during public meetings. The committee suggests that instead of providing specific information, officials could be required to disclose that they received more than \$250 within the past 12 months, or provide an estimated amount and time frame.

### **Conclusion**

We appreciate the opportunity to provide comments on these proposed and amended regulations, and the Commission's efforts to date. We welcome the opportunity to discuss these issues further as the rulemaking process continues. Please do not hesitate to contact me at [aleary@calcities.org](mailto:aleary@calcities.org) if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Alison Leary".

Alison Leary  
Senior Deputy General Counsel  
League of California Cities