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February 9, 2011

Chairman Dan Schnur
Fair Political Practices Commission
429 J Street, Suite 800
Sacramento, CA 95814

RE: Agenda Items 18 and 19

Dear Chairman Schnur:

On behalf of the League of California Cities City Attorneys FPPC Committee, I submit this letter for comment on the above-referenced agenda items. In general, the Committee supports staff's intention in proposing the amendments; however, the Committee has identified some concerns with the manner in which the proposed text seeks to achieve the intended policy.

Item 18: Financial Disclosure by Employees of Newly Created Agencies (Regulations 18734 and 18751)

In 2009, the Commission adopted Regulation 18734. This regulation imposed an obligation on persons appointed to newly created positions within an agency. The regulation sought to advance the public interest in transparency in public decision-making that underlies the PRA's economic interest disclosure requirement. Regulation 18734 advances this interest by insuring that those officials occupying newly created positions begin disclosing their economic interests upon taking office, and that they not wait to disclose their interests until their employing agency gets around to identifying the scope of required disclosure and adding the position to the agency's conflict of interest code. Existing section 18734 provides that newly appointed officials must disclose the broadest range of interests until the agency formally updates its conflict of interest code and determines whether a more narrowly tailored interest disclosure is appropriate. However, the regulation also provides that the agency *may* provide for a narrower scope of disclosure for positions with a more limited range of duties.

The proposed regulation is intended to make clear that Regulation 18374 applies not only to newly created positions within an agency, but also to all positions involved in decision-making in newly created agencies. The Committee supports this purpose. The public interest in requiring the disclosure of economic interests held by persons in newly created positions in an existing agency applies equally to persons holding decision-making positions in a newly created agency. However, the Committee does have a concern with respect to the scope of interim disclosure as required by the proposed regulation.

Existing Regulation 18734 establishes the broadest disclosure category as a *default* disclosure requirement for newly created positions. However, the regulation *permits* an agency to narrow the scope of disclosure required for newly created positions with more limited duties. This makes sense. When new positions are added the agency may not have had the time to carefully consider the responsibilities of the new position to determine the appropriate scope of disclosure. The regulation errs on the side of more disclosure until the agency has had the time to fully consider the matter.

The proposed regulation changes this "may" to a "must." The proposed regulation, if adopted, would require an agency to "set interim disclosure that is more tailored to the positions limited range of duties." Moreover, the proposed regulation requires the agency to list each new position, a description of the position's duties, and a statement of the tailored disclosure requirement." In other words, the proposed regulation would require that for new positions and new agencies, an "interim" conflict of interest code identifying the new positions and their disclosure requirements must be adopted that is not interim at all.

As proposed, the regulation would require that the agency carefully consider position by position the job duties of each position, and determine the appropriately tailored disclosure for each position. Moreover, the proposed regulation does not place a time frame within which the agency is required to adopt its "interim" requirements for new positions. The Committee is concerned that this new regulation may result in agencies taking longer to impose "interim" disclosure requirements, and that this would frustrate the purpose underlying the interim disclosure requirement. The Committee would recommend that the Commission eliminate those portions of the proposed regulation that would convert the option to create tailored interim disclosure requirements for new positions to a duty. The Committee believes this minor change would result in greater likelihood of the Commission achieving its purpose in adopting the interim disclosure requirement for newly created positions and agencies.

With respect to the proposed revision to Regulation 18751, the Committee supports the proposal.

Item 19: Revisions to Form 802

The Committee supports staff's efforts to improve this form; however, we have identified one minor revision that we believe would better reflect the requirements of the regulations. Form 802 will be required to be used to report, among other things, an official's use of a ticket or pass to gain admission to an event at which the official performs a ceremonial role or function on behalf of the agency. This reporting requirement is imposed by Regulation 18942(a)(13). This regulation provides that the use of a ticket for this purpose is not considered a gift, "so long as *the official* complies with the posting provisions..."

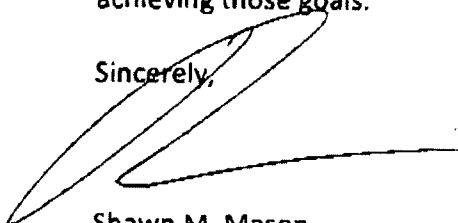
Section 3 of the proposed form contains a verification of compliance with the regulation requirements. The form requires that the verification be signed by the "Agency Head" or their designee. While this may be appropriate for the distribution of tickets under 18944.1, it is not

appropriate for the use of a ticket for admission to an event at which an official plays a ceremonial role. As stated above, Regulation 18942 provides that the official performing the ceremonial role complies with the posting requirement. Quite often the official performing a ceremonial role will not be the Agency Head. In addition, there may be times when an official attends an event to perform a ceremonial role and the Agency Head is unaware that she has done so.

The Committee believes this issue can be resolved by simply adding a second verification line for signature by the official when the form is provided to document compliance with 18942(a) (13). Thus, there would be two options under section 13; one for execution by the Agency Head to make the necessary report under 18944.1 and the other to be executed by the official when making the report required by 18942. The instructions under section 13 should then be modified to make this clear.

As stated at the outset, the Committee supports the policy goals sought to be achieved by the amendments proposed in items 18 and 19 on your agenda. We appreciate the opportunity to provide input into this effort, and hope the Commission finds these suggestions helpful in achieving those goals.

Sincerely,



Shawn M. Mason
City Attorney
City of San Mateo

cc: Scott Hallabrin, General Counsel