

March 14, 2012

VIA FACSIMILE (916) 327-2026

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

Re: **AMENDED** CONSIDERATION OF PETITION TO AMEND 18705.5
MARCH 15, 2012 -- AGENDA ITEM #43

Dear Chairperson Ravel and Members of the Commission:

This law firm represents the following public agencies that have authorized the submission of the above-listed Petition to the Fair Political Practices Commission ("Commission") to amend Regulation 18705.5: the City of Anaheim; the City of Dana Point; the City of Irvine; the City of La Palma; the City of Newport Beach; the City of San Clemente; the City of Villa Park; and the City of Yorba Linda ("Clients").

On behalf of our Clients, I respectfully request you adopt the Petition for the reasons cited in our Petition and those provided in the various comment letters submitted to the Commission prior to the March 15th hearing. Since the filing of our original Petition in December of 2011, we have worked with a number of stakeholders, including the League of Cities, and the Commission Staff to address some of the concerns raised relating to the scope of the Petition. The revised draft of Regulation 18705.5 is attached for the Commission's consideration and incorporates many of the suggestions of these stakeholders (e.g., clarifying the legal basis for appointments) to ensure a very limited exception to the Political Reform Act's "Personal Financial Effect" rule as well as to provide for additional transparency.

Our Clients, and others in the regulated community, believe strongly that the burden of compliance with the existing rule does outweigh the rule's effectiveness and therefore urge the Commission to adopt the Petition and amend Regulation 18705.5 as outlined in the attached version.

Very truly yours,

RUTAN & TUCKER, LLP


Ash Pirayou

AP:jl
Attachment

1 REVISIONS TO 18705.5

2 (Regulations of the Fair Political Practices Commission, Title 2, Division 6, California Code of
3 Regulations.)

4 **§ 18705.5. Materiality Standard: Economic Interest in Personal Finances.**

5 (a) A reasonably foreseeable financial effect on a public official's or his or her
6 immediate family's personal finances is material if it is at least \$250 in any 12-month period.
7 When determining whether a governmental decision has a material financial effect on a public
8 official's economic interest in his or her personal finances, neither a financial effect on the value of
9 real property owned directly or indirectly by the official, nor a financial effect on the gross
10 revenues, expenses, or value of assets and liabilities of a business entity in which the official has a
11 direct or indirect investment interest shall be considered.

12 (b) The financial effects of a decision which affects only the salary, per diem, or
13 reimbursement for expenses the public official or a member of his or her immediate family
14 receives from a federal, state, or local government agency shall not be deemed material, unless the
15 decision is to appoint, hire, fire, promote, demote, suspend without pay or otherwise take
16 disciplinary action with financial sanction against the official or a member of his or her immediate
17 family, or to set a salary for the official or a member of his or her immediate family which is
18 different from salaries paid to other employees of the government agency in the same job
19 classification or position, or when the member of the public official's immediate family is the only
20 person in the job classification or position.

21 (c) Notwithstanding subsection (b), pursuant to Government Code Section 82030(b)(2)
22 and California Code of Regulations, Title 2, section 18232, a public official may make, participate
23 in making, or use his/her official position to influence or attempt to influence, a government
24 decision where all of the following conditions are satisfied:

25 (1) The decision is on his/her appointment as an officer of the body of which he/she is
26 a member (e.g., mayor or deputy mayor), or to a committee, board, or commission of a public
27 agency, a special district, a joint powers agency or authority, a joint powers insurance agency or
28 authority, or a metropolitan planning organization.

1 (2) The appointment is one required to be made by the body of which the official is a
2 member pursuant to either state law, local law, or a joint powers agreement, or the official is
3 appointed pursuant to state law.

4 (3) The body making the appointment referred to in paragraph (1) adopts and posts on
5 its website, on a form provided by the Commission, a list that sets forth each appointed position
6 for which compensation is paid, the salary or stipend for each appointed position, the name of the
7 public official who has been appointed to the position and the name of the public official, if any,
8 who has been appointed as an alternate, and the term of the position.

9 Comment: Cross-references: For the definition of “immediate family” see Government
10 Code section 82029.

11 Note: Authority cited: Section 83112, Government Code. Reference: Sections 87100, 87102.5,
12 87102.6, 87102.8 and 87103, Government Code.

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HISTORY

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1. New section filed 11-23-98; operative 11-23-98 pursuant to the 1974 version of Government Code section 11380.2 and title 2, California Code of Regulations, section 18312(d) and (e) (Register 98, No. 48).
2. Change without regulatory effect amending section heading filed 3-26-99 pursuant to section 100, title 1, California Code of Regulations (Register 99, No. 13).
3. Editorial correction of 1 (Register 2000, No. 25).
4. Amendment of section heading and section filed 1-17-2001; operative 2-1-2001. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil CO10924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2001, No. 3).
5. Amendment of subsection (a) filed 1-16-2002; operative 2-15-2002 (Register 2002, No. 3).
6. Amendment of subsection (b) filed 6-21-2005; operative 7-21-2005 (Register 2005, No. 25).
7. Amendment of subsection (a) filed 12-18-2006; operative 1-17-2007. Submitted to OAL for filing pursuant to *Fair Political Practices Commission v. Office of Administrative Law*, 3 Civil CO10924, California Court of Appeal, Third Appellate District, nonpublished decision, April 27, 1992 (FPPC regulations only subject to 1974 Administrative Procedure Act rulemaking requirements) (Register 2006, No. 51).

**** Transmit Confirmation Report ****

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Rutan & Tucker, LLP Fax:650-320-9905

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DATE: **March 14, 2012**

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Chairperson Ann Ravel and Commissioners Fair Political Practices Commission	(916) 327-2026	

FROM: **Ash Pirayou - 2480**

RE: **AMENDED Consideration of Petition to Amend 18705.5
March 15, 2012 -- Agenda Item #43**

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MESSAGE:

Please find the attached correspondence and its attachment.

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