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

RE: Agenda Item 22: Regulations 18700.3, 18703.1, and 18438.5

Dear Chair Remke 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. In its report, your staff proposes revised regulations the effect of which would be to (1) repeal the regulation declaring that an official has an economic interest in business entities related to entities in which the official owns an interest, and (2) redefine the term, "otherwise related business entity." For the reasons described in this letter, our committee supports staff's recommendations.

**Business Entities in Which an Official has an Interest**

In 1974, California voters enacted the Political Reform Act. Among other things, the Act established the rule prohibiting public officials from participating in government decisions in which they have a private, financial interest. The Act lists the "interests" that must be considered in applying this prohibition. Among these is "any business entity in which the public official has a direct or indirect *investment*." Thus, to determine if an official has an interest in a particular entity, one must determine if the official has an *investment* in the entity.

Government Code section 82034 defines "investment" for the purposes of the Act. It defines the term, in relevant part, as "a financial interest in or security issued by a business entity, ...*if* the business entity or any parent, subsidiary, or otherwise related business entity has an interest in real property in the jurisdiction, or does business or plans to do business in the jurisdiction, or has done business within the jurisdiction at any time during the two years prior to the time any statement or other action is required under this title." (Emphasis added.)

By these terms, if a business entity in which an official has an interest does not have the contacts with the official's jurisdiction described above, it is not considered an "investment" under the Act. If it is not an investment, then the official's investment in the entity would not be deemed an economic interest that must be considered in applying the provisions of the Act.

To determine whether an entity has sufficient contacts with an official's jurisdiction, one must determine whether a the entity, or "a parent, subsidiary, or otherwise related business entity" has the specified contacts with the jurisdiction. Section 82034 does not define this term, but requires the Commission to do so.
Somewhere along the way, defining this term went in a different direction. Regulation 18703.1 was drafted to not only define "parent, subsidiary, or otherwise related entity," but also to declare that "business entity interests" include entities that are parents, subsidiaries, or otherwise related to entities in which an official has a financial interest. As your staff points out, this regulation is inconsistent with the provisions of section 82034, and extends the definition of investment interests beyond the stated reach in the Act. Our committee agrees with your staff, and supports staff's recommendation to amend the regulations to address this inconsistency.

**New Definition of "Otherwise related entity"**

Your staff also proposes to revise the definition of the term "parent, subsidiary, or otherwise related entity." While the definitions of "parent and subsidiary" remain substantially the same, the term "otherwise related entity" is revised. Staff is concerned that the existing language is vague and difficult to apply to real world situations. We agree with staff's concern, and believe staff's proposed revision will substantially improve this definition.

**Placement of New Regulation**

While our committee supports staff's recommendation as to its substance, we do have a minor concern with the placement of the new definition. Section 82034, the statute defining the term, "investment," is found in the chapter of the Act containing definitions of key terms used throughout the Act. This is because the term is used in different contexts, including the disqualification and disclosure articles under the Conflict of Interest Chapter.

The same is true for the regulations. FPPC regulations are found in Division 6 of Title 2 of the California Code of Regulations. Chapter 2 of this Division is intended to contain definitions of key terms used in the Division. It does not currently contain a definition of the term, "parent, subsidiary, or otherwise related business entity." We suggest that the definition of this term might better be located in Chapter 2.

Staff proposes placing this definition in a new regulation 18700.3 located in the Article addressing the general conflict of interest prohibition. The problem with this approach is that the term is also used in the statutes addressing disclosure of business interests, and

the regulations on that subject found in Chapter 7, Article 2, do not contain a definition of the term. An official looking in the regulations to determine what business interests they must disclose would have to know to look in the Article of the regulations on the general prohibition to determine how the term "parent, subsidiary, or otherwise related business entity" is defined. By placing the new definition in Chapter 2, the term will be defined consistently for all purposes and in a location officials should check if terms are not defined elsewhere.

Thank you for your consideration of these comments. We hope you find them helpful.

Sincerely,

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