CITY OF SAN MATEO

330 West 20th Avenue
San Mateo, CA 94403-1388

Office of the City Attorney

Telephone (650) 522-7020

February 17, 2015

Members of the Commission
Fair Political Practices Commission
428 J Street, Suite 800
Sacramento, CA 95814

RE: Agenda Item 5: Reorganization and Amendment of Conflict of Interest Regulations

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 April 2013, the Commission adopted a revised regulation 18700 setting out a 4-step process for analyzing conflict of interest questions. This process was intended to replace the 8-step process currently found in the regulations. This regulation was delayed in its implementation while the Commission considered proposals to amend the regulations that would make up the parts of the 4-step process. The proposed amendments would formally codify the 4-step process with some minor, non-substantive amendments.

The Committee supported adoption of the simplified 4-step process when it was proposed. We continue to support the 4-step approach, and recommended approval of the proposed regulations with one minor revision to proposed Regulation 18700.

Subdivision 18700(c)(3)- Definition of "Governmental Agency"

Subdivision (c) sets forth the definitions of key terms that are used in the conflict of interest regulations. Subdivision (c)(3) defines the term, "Governmental Agency." The existing definitions include the phrase "or any agency or organization acting as a governmental agency *as determined under Regulation 18700.1*" (Emphasis added.) As staff explains this language was included in the initial draft of this regulation, because it was staff's intention to draft a regulation

(to be placed in 18700.1) that would explain the circumstances under which non-governmental organizations would be considered governmental agencies for the purposes of conflict of interest analysis. The intention was to codify the Commission's decision in *In re Siegel*. The proposed regulation would eliminate the phrase "or any agency or organization acting as a governmental agency as determined under Regulation 18700.1," because the regulation codifying the *In re Siegel* has not yet been adopted.

The concern with this approach is that the omission of the words "or any agency or organization acting as a governmental agency" might suggest that the decision in *In Re Siegel* is no longer valid. It is recommended that the proposed subdivision be revised to read as follows:

"(3) 'Governmental agency' means any state or local agency or any agency or organization acting as a governmental agency."

Thank you for your consideration of these comments.

Sincerely,

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