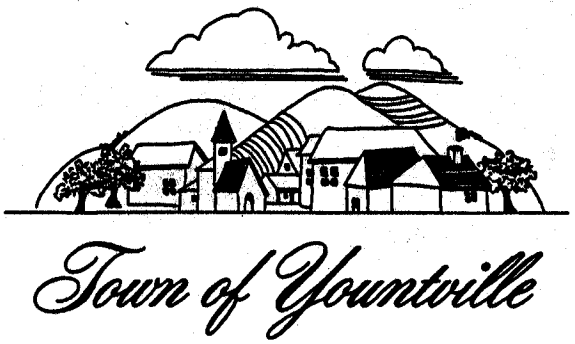

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April 8, 2002

Fair Political Practices Commission
Attn: Natalie Bocanegra
428 J Street, Suite 800
Sacramento, California 95814

RE: The New Conflict of Interest Rules and Small Jurisdictions

Dear Ms. Bocanegra:

Thank you for taking the time to attend a meeting of small jurisdictions to discuss the new conflict of interest regulations in Sacramento in December of 2001. This letter is designed to provide more detailed comments and suggestions to your agency, with particular emphasis on the 500-foot rule and the public generally exceptions. These proposed amendments have been developed in discussion with other small jurisdictions over the past few months.

Application of The 500-foot rule in Yountville

The Town of Yountville is a very small town in the Napa Valley both in population and in area. The Town encompasses an area of just 1.56 square miles and has a population of under 4,000 people. Therefore, the application of the new 500-foot rule in our small jurisdiction has been extremely difficult. In previous letters we have provided you with conflict of interest and zoning maps that show that many of the councilmembers have conflicts over much of the area of the Town, particularly our small commercial zone. One or more of our councilmembers have been disqualified on almost every significant issue that has come to the Council since the new rules were adopted. Therefore, the Council urges the FPPC to reduce the new 500-foot rule to a 300-foot standard, at least for small jurisdictions.

Regulation 18704.2. Determining Whether Directly or Indirectly Involved in a Governmental Decision: Interest in Real Property.

The best way to address the issues in Yountville would be a change of the 500-foot rule to a 300-foot rule for qualified small jurisdictions. At our December meeting, we understood that an amendment to regulation 18704.2 establishing the 500-foot rule would not be likely since it had just been amended in 2001. However, through other calls to your agency on other conflicts issues, we have learned that 18704.2 will require other changes and may be reconsidered by the Commission this year. Therefore, since the Commission will already be revisiting the regulation,

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we would assert that inclusion of the small jurisdiction issue in that regulation would be appropriate at this time.

Our proposed amendment to the section could appear as:

> **18704.2. Determining Whether Directly or Indirectly Involved in a Governmental Decision: Interest in Real Property.**
>
> (a) Real property in which a public official has an economic interest, is directly involved in a governmental decision if that real property is the subject of the governmental decision, or if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision. The 500-foot standard shall be reduced to 300-feet for qualified small jurisdictions as defined in regulation 18707.3. Real property is the "subject of the governmental decision" if:...

Alternatively, discussions with other small jurisdictions have raised the option of reducing the size of small jurisdictions that would qualify for this exception. Alternative language for this section could appear as:

> **18704.2. Determining Whether Directly or Indirectly Involved in a Governmental Decision: Interest in Real Property.**
>
> (a) Real property in which a public official has an economic interest, is directly involved in a governmental decision if that real property is the subject of the governmental decision, or if any part of that real property is located within 500 feet of the boundaries (or proposed boundaries) of the real property which is the subject of the governmental decision. The 500-foot standard shall be reduced to 300-feet for jurisdictions with less than 10,000 residents. Real property is the "subject of the governmental decision" if:...

If one of these options is adopted as suggested, then there would be corresponding changes and perhaps deletion of Regulation 18707.3.

Regulation 18707.3. Public Generally – Small Jurisdictions: Principle Residence.

The alternative approach to solving the small jurisdiction issues lies in the public generally exception. The "public generally" exception for small jurisdictions as currently written does not offer any relief for the public officials in the Town of Yountville. Since most of our conflicts arise from the 500-foot rule (see above), the inclusion of the 500-foot requirement in subsection (3) generally eliminates our use of the exception, and in practical terms makes the exception more restrictive than the rule. Additionally, the limited "principal residence" scope of the rule is too narrow to be useful. We strongly urge the FPPC to expand the scope of the rule to include all real property interests and to leave the standard in this section at 300 feet.

The drawback to this approach is that our conflicts map will retain the 500-foot circles and officials will need to seek FPPC immunity letters to participate with confidence under this exception. We have found it very difficult to obtain immunity letters in the past, and therefore many of our officials will recuse themselves rather than face the uncertainty of application of the public generally exception. Small jurisdictions like ours do not have the financial resources to continually write lengthy letters to the FPPC or to obtain professional appraisals to help the public officials make factual determinations required under the public generally analysis.

Our proposed changes to this regulation are:

- To change all "principal residence" references to "real property interest" to broaden the scope of the exception. This would include the removal of subsection (b) altogether.
- To remove subsection (2) which under the new rules reincorporates the 500-foot rule.
- To remove subsection (4) requiring 100 residences within 2500 feet of the property which is the subject of the decision. This number is hard to meet in very small jurisdictions, particularly if the project is on the edge of town. If this standard is removed altogether, the standard would simply default to the subsection (6) "substantially same effect" test.
- To make this change more focused on very small jurisdictions, Yountville would support the limitation of the population of qualifying jurisdictions to 10,000 residents.

The proposed changes could appear as:

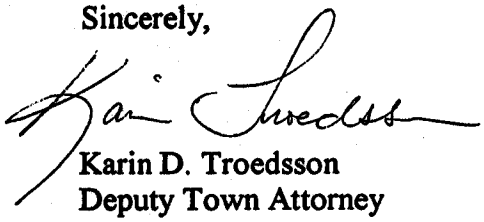
18707.3. Public Generally - Small Jurisdictions~~; Principal Residence.~~

(a) The effect of a governmental decision on the ~~principal residence~~ real property interest of a public official is not distinguishable from the effect on the public generally where all of the following conditions are met:
(1) The public official's agency has jurisdiction over a population of 10,000~~25,000~~ or less.
~~(2) The decision does not have a direct effect (as provided in Title 2, California Code of Regulations, section 18704.2(a)) on the real property that serves as the public official's principal residence.~~
(3) The real property interest ~~that serves as the public official's principal residence~~ is more than ~~500~~ 300 feet from the boundaries of the property which is the subject of the decision.
~~(4) There are at least 100 properties under separate ownership which are within a 2,500 foot radius of the boundaries of the property which is the subject of the decision.~~
(5) The ~~principal residence~~real property interest is located on a parcel of land not more than one acre in size, or which, under the zoning and subdivision regulations of the jurisdiction in which it is located, cannot be further subdivided.
(6) The effect of the decision on the official's real property interest will be substantially the same as the effect of the decision on the majority of the real ~~residential~~ properties which are beyond ~~500~~ 300 feet~~, but within 2,500 feet~~ of the boundaries of the real property that is the subject of the decision.

~~(b) For purposes of this regulation, "principal residence" means the domicile of a person, in which the person's habitation is fixed, wherein the person has the intention of remaining, and to which the person, whenever he or she is absent, has the intention of returning. At any given time, a person may have only one principal residence. With respect to units in condominium complexes, planned unit developments, and similar residences, "the real property that serves as the public official's principal residence" and "principal residence," as used in this regulation, means the unit or space in which the official has a separate ownership interest.~~

Thank you once again for your assistance with these issues and your continued cooperation. Please feel free to call if you have any comments or questions.

Sincerely,



Karin D. Troedsson
Deputy Town Attorney

cc: Yountville Mayor & Town Council
Kevin Plett, Yountville Town Administrator
Diane Price, Yountville Town Attorney
Robert Tiernan, Yountville Planning Director
John Wallace, Fair Political Practices Commission
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