

THE CITY OF



PLEASANTON

July 12, 2019

Chair Richard C. Miadich  
Commissioner Frank Cardenas  
Commissioner Brian Hatch  
Commissioner Allison Hayward  
Fair Political Practices Commission  
102 Q Street, Suite 3000  
Sacramento, CA, 95811

Re: July 2019 Agenda Items 14 (Regulation 18702.1) and 15 (Regulation 18702.3)

Chair Miadich and Commissioners Cardenas, Hatch and Hayward:

I am currently the Chair of the League of California Cities' FPPC Committee of the City Attorneys' Department. The Committee is comprised exclusively of city attorneys who provide Political Reform Act guidance to public officials on a regular basis. The Committee has reviewed the proposed amendments to Regulations 18702.1 (materiality standards for business entities) and 18702.3 (materiality standards for sources of income). We appreciate staff's work on the proposed amendments and offer the following comments.

First, while we understand the desire to create bright-line materiality standards, based on our experience we believe that the proposed amendments would make it more difficult for public lawyers to provide guidance to public officials. The proposed amendments establish monetary threshold amounts in order to determine a decision's effects on an official's interest in: (a) a business entity not explicitly involved in the decision in the case of Regulation 18702.1; and (b) a source of income that is a nonprofit corporation in the case of Regulation 18702.3. We believe that it will be extremely difficult for public lawyers and public officials to determine if a particular decision will likely trigger these thresholds.

In order to provide guidance under the proposed regulations, public lawyers would be required to have a detailed understanding of a business entity's annual gross revenues, assets, liabilities, and expenditures, or in the case of a nonprofit organization, the organization's annual gross receipts and expenses. This information would not always be readily accessible. Furthermore, applying the proposed standards to the facts of a particular case would be complicated and may require accounting, real estate or other expertise in order to determine whether the thresholds are triggered.

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As an alternative, the Commission may want to consider establishing a rebuttable presumption for these materiality standards. This could include a simpler general rule that may be rebutted by establishing that certain criteria have or have not been met (which may include certain monetary thresholds). That way, public officials would not have to engage in a detailed accounting or other valuation exercise unless they wanted to show facts to rebut the general presumption. This approach was recently incorporated in the Commission's amendments to the materiality standards for property interests (Regulation 18702.2).

Second, in the proposed amendments to Regulation 18702.3 (materiality standards for sources of income), one factor is based on whether there is ". . . clear and convincing evidence the decision would have a substantial effect on the property." (See subdivisions (a)(2)(C)(ii) and (a)(3)(C)(ii).) It would be helpful for there to be clarification added to the subdivisions as to what is considered a "substantial effect."

Finally, the proposed amendments to Regulation 18702.1(a)(5) contain a catch-all provision which makes a financial interest in a business entity material if ". . . [t]he decision has an effect on the entity, other than an effect on the entity's annual gross revenues, assets or liabilities, expenses, or real property interest as provided in subdivisions (a)(2) through (4), which may contribute to the change in the entity's value." We believe that this catch-all provision is unnecessary and defeats the purpose of the amendment to establish a bright-line standard.

Thank you very much for your consideration of these comments. Our Committee will continue to follow your consideration of these and other regulations to implement the Political Reform Act and maintain the public's trust.

Very truly yours,

A handwritten signature in blue ink that reads "Daniel G. Sodergren". The signature is written in a cursive, flowing style.

Daniel G. Sodergren  
City Attorney