



May 15, 2023

Chair Richard C. Miadich
Commissioner Catherine Baker
Commissioner E. Dotson Wilson
Commissioner Abby Wood
Fair Political Practices Commission
1102 Q Street, Suite 3000
Sacramento, CA 95811

Sent Via Email: CommAsst@fppc.ca.gov

RE: Comment letter on May 18, 2023, Agenda Item 6 - Proposed Repeal, Adoption, and Amendment of Levine Act Regulations (18438-18438.8, 18705)

Dear Chair Miadich and Commissioners Baker, Wilson, and Wood:

I write on behalf of the FPPC Committee¹ of the City Attorneys Department of the League of California Cities (Cal Cities).² Cal Cities appreciates staff's diligent work since the passage of SB 1439 in 2022 and the FPPC's public outreach process that has allowed for substantial public input into the draft regulations. The proposed new and amended regulations the FPPC is considering for adoption on May 18 have been significantly improved since earlier drafts and provide helpful clarity to the regulated community. To further clarify remaining ambiguity and ensure the effective realization of the goals of SB 1439, the FPPC Committee respectfully requests consideration of the following comments.

Regulation 18438.1 - Officers and Agencies Under Government Code Section 84308

Consistent with the definitions of "Officer" in Section 84308, subd. (a)(3)—which includes "any candidate for elective office in an agency"—and "Agency" in

¹ The FPPC Committee is comprised of city attorneys who provide Political Reform Act guidance to public officials on a regular basis. Pursuant to the City Attorneys Department [bylaws](#), the Committee is responsible for monitoring FPPC proceedings and advising the FPPC of city concerns and practical implications of proposed policies.

² Cal Cities is an association of 477 California cities dedicated to protecting and restoring local control to provide for the public health, safety, and welfare of their residents, and to enhance the quality of life for all Californians. Cal Cities monitors state and federal legislation of concern to cities and identifies legislation, including proposed rules and regulations, that have statewide significance.



Section 84308, subd. (a)(3)—which excepts the courts or any agency in the judicial branch of government, the Legislature, the Board of Equalization, and constitutional officers—Regulation 18438.1, subd. (d)(4) should be amended to read:

Have decisionmaking authority with respect to the proceeding involving a license, permit, or other entitlement for use and is also a candidate for elected office in an agency or has been a candidate for elected office in an agency in the 12 months prior to the proceeding.

Regulation 18438.2 – Proceedings Under Section 84308

First, the FPPC Committee asks that Section 18438.2, subd. (a)(2) be amended to clarify what it means to “informally” request a proceeding.

Second, the FPPC Committee urges the FPPC to adopt Option 1 or Option 3 for defining the term “pending.”

Finally, the FPPC Committee again recommends Section 18438.2 be amended to specifically address appeals. Under the proposed regulation it is unclear whether the mere possibility of an appeal under a city's municipal code makes it reasonably foreseeable that a decision will come before an officer. Staff's responses to the factual scenarios presented during the FPPC's Law and Policy Committee meeting on May 9, 2023 suggest the mere possibility of an appeal is insufficient to meet the “reasonably foreseeable” standard. The regulated community would benefit from including in the regulation a bright line rule establishing that it is reasonably foreseeable a decision will come before an officer of a body that has appellate authority only once an officer knows or has reason to know an appeal has been filed.

Regulation 18438.3 – Agents Under Section 84308

As explained in the comments Cal Cities submitted for the April Interested Person's meeting, the FPPC Committee is concerned that, in practice, public officials will not always be apprised of when a person is acting as an agent of a party or participant for compensation, making compliance impossible. The FPPC Committee believes there should be a requirement that compensated agents identify themselves as such, i.e. make it clear when they are communicating on behalf of a party or participant.



Regulation 18438.8 – Disclosure Under Section 84308

The FPPC Committee notes that, inclusion of “any officer of the agency” in Regulation 18438.8, subd. (b) exceeds the scope of Section 84308. The FPPC Committee recommends the regulation be amended to better track the statute.

Conclusion

We appreciate the opportunity to provide comments on these proposed and amended regulations, and the Commission’s efforts to date. To the extent the FPPC cannot address these comments in the regulatory text, Cal Cities urges the FPPC to issue, and post on its website, written technical assistance highlighting how the regulations are intended to apply to particular factual scenarios, similar to the discussion at the FPPC’s Law and Policy Committee meeting held on May 9, 2023.

We welcome the opportunity to discuss these issues further as the rulemaking process continues. Please do not hesitate to contact me if you have any questions.

Respectfully,

A handwritten signature in blue ink, appearing to read "Rebecca L. Moon", with a long horizontal flourish extending to the right.

Rebecca L. Moon
Chair, FPPC Committee