



## FPPC Update

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Rachel H. Richman, City Attorney, Rosemead, Assistant City Attorney,  
Alhambra and Santa Clarita

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**FPPC UPDATE SPRING 2017**  
**LEAGUE OF CALIFORNIA CITIES**  
**SAN FRANCISCO**

**Prepared by:**

**Rachel H. Richman, Partner**

**Burke, Williams & Sorensen, LLP**

## **Political Reform Act Revision Project**

In January the FPPC completed its Political Reform Act Revision Project (“Project”). As stated by the FPPC in its 2016 Annual Report, the overarching goal of the Project was to streamline and simplify the FPPC’s foundational law without weakening disclosure or sacrificing accountability.

According to the Commission, a revised Act will:

- Improve compliance and reduce technical violations;
- Encourage participation in the political process by reducing the complexities and costs of seeking office;
- Increase public understanding of the law to promote trust in the system; and,
- Strengthen accountability of public officials and advance enforcement efforts.

In developing the draft, the FPPC partnered with the California Constitution Center, UC Berkeley Law School and UC Davis Law School. Under the supervision of a Berkeley law school professor, four law school students from each school undertook the review and presented the draft to the FPPC’s staff. FPPC staff then made additional edits. Although the League’s FPPC Committee requested a more involved role in the draft creation process, the FPPC preferred to not have parties that represent groups regulated by the Act to be involved in the initial drafting.

The FPPC stated in proposing amendments, it would not make any substantive changes to the Act. Instead the amendments had four goals:

- (1) Redraft with “plain English”
- (2) Incorporate key provisions of regulations into the Act
- (3) Reorganize the Act to put related provisions together
- (4) Repeal or amend language to be consistent with case law or other changes in the law.

Draft 1 of the Act was released at the end of August with a deadline of October 31 for comments. The initial deadline for comments was September 30th, but there were some requests from groups that with the election season overlapping with the comment period additional time was needed.

The FPPC committee reviewed Draft 1 and provided comments to about 12 sections. There were also comments submitted by the State Association of Counties, Political Attorneys Association, Common Cause and a few other groups and individuals. Draft 2 was released on December 6 for comments until December 30. In general most of the Committee’s comments were not added to Draft 2.

One major change from Draft 1 to Draft 2 in response to comments, was removing much of the language that had incorporated FPPC regulations into the Act. The FPPC

Committee as well as other groups felt that moving FPPC regulations into the Act created substantive changes. As a result of those deletions, many Committee comments to Draft 1 were not relevant as the language was removed in Draft 2.

In addition, in speaking with the FPPC's Legal Counsel about the Committee's comments to Draft 1 generally not making it into Draft 2, they felt that as to those items which were still relevant in Draft 2, some of our changes were substantive or were otherwise addressed with different changes or deletions.

The Committee discussed Draft 2, and that although our changes were not generally included, since the changes were in general not substantive in nature, we were not going to push the matter. The Committee did not submit new comments to Draft 2 as that comment period was considered a technical review period so it did not appear that further comments to Draft 2 would be productive. The Committee did note that even trying to review Draft 2 was difficult because there was still a significant re-ordering of sections from Draft 1. Lastly, the Committee noted that because every section has been re-ordered in some manner if the draft of the Act is adopted, it will require time to become familiar with it.

Commission staff is currently working with the Office of Legislative Counsel to prepare the revised PRA language for bill introduction. Commission staff are also working with the Legislature and other stakeholders to determine how best to ensure the bill's success. In January, the Commission voted to "sponsor" the bill in order to permit the Commission to have greater input in the legislative decisions and strategy.

FPPC Staff will notify the Commission when a bill is introduced and how to track its progress through the Legislature and the Committee will monitor that as well. They also stated in their report to the Commission that they will continue to send regular updates throughout the year to keep all interested persons, including the FPPC Committee, informed of any other developments on the Project.

One of the issues noted by Legal Staff at the FPPC was whether the final language drafted will stay intact or whether there will be amendments made to their proposal depending on which legislator sponsors the bill and as the bill moves through the adoption process. In addition, the bill language has to be vetted by the Legal Counsel's Office and meet its drafting style requirements which could also result in changes.

In speaking with FPPC staff in mid-March, the proposed draft is in the Legal Counsel's Office and given its length of 130 pages, they don't anticipate that there will be a bill to introduce this year.

All of the PRA Revision materials as well as the final Draft are on the FPPC's website:

<http://www.fppc.ca.gov/the-law/21st-century-PRA.html>

### **Recent FPPC Regulations:**

Due to the focus of the FPPC on the Political Reform Act Project the last few months, the FPPC has not undertaken many substantive changes to its regulations in the past few months and those that they have adopted were related to lobbying and campaign reporting activities. The Commission in November adopted amendments to Regulations 18700, 18730 and 18940.2 to make CPI adjustment to the Gift Limits. The gift limit for 2017-2018 is now \$470.

Commission staff has stated in their agendas to the Commission that they plan to do a review and refinement of selected provisions of the conflict of interest regulations which were enacted in 2014 and 2015. They indicate that they will have some proposed amendments for its May agenda. It is also not clear how this process will be affected by the progress of the Political Reform Act bill and syncing up those changes if the bill is still pending.

### **General Activities of the FPPC in 2016**

The FPPC produces an annual report that included some interesting statistics on Staff and Commission activities:

- Answered 9,622 calls at its ASK FPPC line;
- Responded to 12,495 Emails (the Report noted that Staff responds quickly to basic questions regarding the Act);
- 252 Advice letters of which 57 dealt with Government Code Section 1090 were issued; and,
- The Enforcement division had 311 enforcement orders issued by the Commission which resulted in almost \$900,000 in fines.

### **Pending Legislation**

In March, Commission Staff presented 20 bills that they are tracking. At that time, they were not recommending that the FPPC take any positions on the bills. In addition, the League has also identified several bills it is watching related to the Political Reform Act. Below are a few of the bills that both the FPPC and League are watching which are more substantive and germane to our group:

### **AB 551 Levine Political Reform Act of 1974: employment restrictions**

The Act imposes certain restrictions on post governmental employment of specified public officials of state and local agencies. This bill would prohibit an elected or appointed officer of a state or local agency, *while holding office* and for a period of one

year after leaving office, from engaging in specified conduct, including maintaining employment with, as specified, or being a compensated consultant of that agency or, for compensation, aiding, advising, consulting with, or assisting an entity with a permit, regulatory action, or enforcement action pending before the agency. Currently, the League has taken a Watch position. The relevant sections are below.

Section 87406.3 of the Government Code is amended to read:

(a) A local elected official, chief administrative officer of a county, city manager, or general manager or chief administrator of a special district who held a position with a local government agency as defined in Section 82041 shall not, for a period of one year after leaving that office or employment, act as agent or attorney for, or otherwise represent, for compensation, any other person, by making any formal or informal appearance before, or by making any oral or written communication to, that local government agency, or any committee, subcommittee, or present member of that local government agency, or any officer or employee of the local government agency, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or influencing any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, or contract, or the sale or purchase of goods or property.

~~(b) Subdivision (a) shall not apply to any individual who is, at the time of the appearance or communication, a board member, officer, or employee of another local government agency or an employee or representative of a public agency and is appearing or communicating on behalf of that agency.~~

~~(c)~~

~~(b)~~ Nothing in this section shall *This section does not* preclude a local government agency from adopting an ordinance or policy that restricts the appearance of a former local official before that local government agency if that ordinance or policy is more restrictive than subdivision (a).

~~(d)~~

~~(c)~~ Notwithstanding Sections 82002 and 82037, the following definitions shall apply for purposes of this section only:

(1) "Administrative action" means the proposal, drafting, development, consideration, amendment, enactment, or defeat by any local government agency of any matter, including any rule, regulation, or other action in any regulatory proceeding, whether quasi-legislative or quasi-judicial. Administrative action does not include any action that is solely ministerial.

(2) "Legislative action" means the drafting, introduction, modification, enactment, defeat, approval, or veto of any ordinance, amendment, resolution, report, nomination, or other matter by the legislative body of a local government agency or by any committee or subcommittee thereof, or by a member or employee of the legislative body of the local government agency acting in his or her official capacity.

## **AB 1089 Mullin Local elective offices: contributions limitations**

The Act prohibits a person, other than a small contributor committee or political party committee, from making to a candidate for elective state office, for statewide elective office, or for office of the Governor, and prohibits those candidates from accepting from a person, a contribution totaling more than a specified amount per election. For a candidate for elective state office other than a candidate for statewide elective office, the limitation on contributions is \$3,000 per election, as that amount is adjusted by the Fair Political Practices Commission in January of every odd-numbered year.

This bill, commencing January 1, 2019, would also prohibit a person from making to a candidate for local elective office, and would prohibit a candidate for local elective office from accepting from a person, a contribution totaling more than the amount set forth in the act for limitations on contributions to a candidate for elective state office. This bill would also authorize a county, city, special district, or school district to impose a limitation that is different from the limitation imposed by this bill. This bill would make specified provisions of the act relating to contribution limitations applicable to a candidate for a local elective office, except as specified. Currently the League has taken a Watch position. The relevant sections are below.

Section 85301 is amended as follows:

(a) A person, other than a small contributor committee or political party committee, ~~may~~ *shall* not make to ~~any~~ a candidate for elective state office other than a candidate for statewide elective office, and a candidate for elective state office other than a candidate for statewide elective office ~~may~~ *shall* not accept from a person, ~~any~~ a contribution totaling more than three thousand dollars (\$3,000) per election.

(b) Except to a candidate for Governor, a person, other than a small contributor committee or political party committee, ~~may~~ *shall* not make to ~~any~~ a candidate for statewide elective office, and except a candidate for Governor, a candidate for statewide elective office ~~may~~ *shall* not accept from a person other than a small contributor committee or a political party committee, ~~any~~ a contribution totaling more than five thousand dollars (\$5,000) per election.

(c) A person, other than a small contributor committee or political party committee, ~~may~~ *shall* not make to any a candidate for Governor, and a candidate for ~~governor~~ *Governor* ~~may~~ *shall* not accept from any person other than a small contributor committee or political party committee, ~~any~~ a contribution totaling more than twenty thousand dollars (\$20,000) per election.

(d) (1) *A person shall not make to a candidate for local elective office, and a candidate for local elective office shall not accept from a person, a contribution totaling more than the amount set forth in subdivision (a) per election, as that amount is adjusted by the commission pursuant to Section 83124. This subdivision does not apply in a jurisdiction in which the local government imposes a limit on contributions pursuant to Section 85702.5.*

(2) *This subdivision shall become operative on January 1, 2019.*



85702.5. is added in full to read

*(a) A local government agency may, by ordinance or resolution, impose a limit on contributions to a candidate for local elective office that is different from the limit set forth in subdivision (d) of Section 85301. The limitation may also be imposed by means of a local initiative measure.*

*(b) A local government agency that establishes a contribution limit pursuant to subdivision (a) may adopt enforcement standards for a violation of that limit, which may include administrative, civil, or criminal penalties.*

*(c) The commission is not responsible for the administration or enforcement of a contribution limit adopted pursuant to subdivision (a).*

*(d) This section shall become operative on January 1, 2019. A local government agency's limit on contributions to a candidate for local elective office that is in effect on the operative date of this section shall be deemed to be a limit imposed pursuant to subdivision (a).*

### **AB 1524 Brough / SB 45 Mendoza Political Reform Act: mass mailing prohibitions**

There are two bills on the topic of mass mailings both prohibit certain mass mailings that occur 90 days before an election. The House bill applies the 90-day prohibition to both candidates and agencies with ballot measures pending while the Senate Bill only applies the prohibition to candidates. The League has taken a Watch position.

89004 is added to read:

*(a) Within 90 days preceding an election, a mass mailing shall not be sent by either of the following:*

*(1) A candidate, or on his or her behalf, if the candidate's name will be on the ballot at that election.*

*(2) An agency, if a measure on the ballot at that election will have a direct financial impact on the agency, unless it is a school district or community college district providing information to the public about the possible effects of a bond issue or other ballot measure consistent with the criteria set forth in subdivision (b) of Section 7054 of the Education Code.*

*(b) Subdivision (a) does not apply to a mass mailing that is required by law to be sent to members of the public within 90 days preceding an election.*

*(c) For purposes of this section, "mass mailing" means a mass mailing, as defined by Section 82041.5, that is consistent with the criteria of subdivision (a) of Section 18901 of Title 2 of the California Code of Regulations and, pursuant to subdivision (b) of that section, is not prohibited by Section 89001.*

SB 45 89003 is added to read:

*(a) A mass mailing shall not be sent within the 90 days preceding an election by or on behalf of a candidate whose name will appear on the ballot at that election for a city, county, or special district elective office.*

*(b) For purposes of this section, “mass mailing” means a mass mailing, as defined by Section 82041.5, that meets the criteria of subdivision (a) of Section 18901 of Title 2 of the California Code of Regulations and, pursuant to subdivision (b) of Section 18901 of Title 2 of the California Code of Regulations, is not prohibited by Section 89001.*

### **SB 24 Portantino Political Reform Act: Economic interest disclosure**

The Act requires disclosures to include a statement indicating, within a specified value range, the fair market value of investments or interests in real property and the aggregate value of income received from each reportable source. This bill would revise the dollar amounts associated with these ranges to provide for 8 total ranges of fair market value of investments and real property interests and 10 total ranges of aggregate value of income making more specific categories for those amounts. The League has taken a Watch position.

The proposed disclosure categories for investments, interests in real property and sources of income are being changed from: two thousand dollars (\$2,000) to ten thousand dollars (\$10,000), ten thousand dollars (\$10,000) to one hundred thousand dollars (\$100,000) one hundred thousand dollars (\$100,000) to one million dollars (\$1,000,000), or whether it exceeds one million dollars (\$1,000,000), to following ranges:

- (A) At least two thousand dollars (\$2,000) but not greater than twenty-five thousand dollars (\$25,000).*
- (B) More than twenty-five thousand dollars (\$25,000) but not greater than one hundred thousand dollars (\$100,000).*
- (C) More than one hundred thousand dollars (\$100,000) but not greater than two hundred fifty thousand dollars (\$250,000).*
- (D) More than two hundred fifty thousand dollars (\$250,000) but not greater than five hundred thousand dollars (\$500,000).*
- (E) More than five hundred thousand dollars (\$500,000) but not greater than one million dollars (\$1,000,000).*
- (F) More than one million dollars (\$1,000,000) but not greater than five million dollars (\$5,000,000).*
- (G) More than five million dollars (\$5,000,000) but not greater than ten million dollars (\$10,000,000).*
- (H) More than ten million dollars (\$10,000,000).*

### **SB 529 Nguyen Inspection of public records**

This bill would require that nomination documents and signatures in lieu of filing fee petitions be furnished promptly upon request, and it would clarify that a member of the public need not request these records pursuant to the California Public Records Act. The League has taken a Watch position.

Section 17100 of the Elections Code is amended to read:

(a) All nomination documents and signatures in lieu of filing fee petitions filed in accordance with this code shall be held by the officer with whom they are filed during the term of office for which they are filed and for four years after the expiration of the term.

(b) Thereafter, the documents and petitions shall be destroyed as soon as practicable unless they either are in evidence in some action or proceeding then pending or unless the elections official has received a written request from the Attorney General, the Secretary of State, the Fair Political Practices Commission, a district attorney, a grand jury, or the governing body of a county, city and county, or district, including a school district, that the documents and petitions be preserved for use in a pending or ongoing investigation into election irregularities, the subject of which relates to the placement of a candidate's name on the ballot, or in a pending or ongoing investigation into a violation of the Political Reform Act of 1974 (Title 9 (commencing with Section 81000) of the Government Code).

(c) Public access to the documents described in subdivision (a) shall be limited to viewing the documents only. *However, these documents shall be furnished promptly upon request and without requiring that the records be requested pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).* The public ~~may~~ shall not copy or distribute copies of the documents described in subdivision (a) that contain signatures of voters.

Section 84226 is added to the Government Code, to read:

*In accordance with Section 81008, a recipient committee campaign statement filed with a local filing officer pursuant to this article shall be furnished promptly upon request and without requiring that the statement be requested pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).*

## **Recent Opinion/Advice Letters as summarized from the FPPC**

### **Conflict of Interest Advice Letters**

#### **Jolie Houston A-16-258**

The Act does not prohibit a council member from paying her share of the application fee for a Single Story Overlay District encompassing her residence or participating in the mail-in vote to establish the District because neither of these actions would constitute making, participating in making, or using her position to influence a governmental decision.

#### **Bill Kampe, Mayor A-16-267**

The Mayor owns residential real property within 500 feet of the Coastal Zone subject to Local Coastal Program decisions. He may participate in those decisions that only affect property that is further than 500 feet from his property, if the decisions do not implicate

materiality factors such as those listed in Regulation 18702.2(a)(10) and (12); and, he may participate in decisions that affect the entire Coastal Zone under the “public generally exception,” so long as his residential property is not uniquely financially affected. More than 25% of the City is in or within 500 feet of the Coastal Zone.

**Donna Mooney A-17-010**

A Councilmember who is a real estate agent in her private capacity and receives commission income in connection with property transactions has an interest in party she represents in a sales transaction and her broker. Therefore, if she represents the seller of property in a transaction, she does not have an interest in the buyer/current owner of the property and the financial effect on the property and the buyer/current owner does not create a conflict of interest.

**John L. Fellows III A-16-226**

For the purpose of applying Regulation 18702.2, an official may measure from the boundary of his real property to the boundary of a specific project site as opposed to the boundary of an entire legal parcel. The official may participate in decisions regarding a parcel within 500 feet of his residence because the decision will not have a reasonably foreseeable material financial effect on his real property.

**Donald A. Larkin A-16-227**

A city councilmember may not take part in decisions to make recommendations to the High Speed Rail Authority regarding the proposed High Speed Rail that will run through the city. Depending on the route that is selected, it is likely that his residence will be affected by increased noise and traffic, and it is possible that his residence will be taken by eminent domain. The decisions will have a reasonably foreseeable material financial effect on his real property.

**Colin Doyle A-16-252**

The requestor is a Planning Commissioner and a local architect. In his private capacity as an architect, the Commissioner submitted a rezoning application on behalf of his client. While he may not appear before the Planning Commission, he may appear before the City Council on behalf of his client regarding the zoning change application so long as the Planning Commission has no further input on the application and he does not appear in his official capacity. He may also appear before the Design Review Board on behalf of his client. It is under the authority of the City Council and not the Planning Commission. Similarly, he must not appear in his official capacity.

**Laurence S. Wiener A-17-018a**

Councilmembers who own property in the Hillside zone of the city may participate in a procedural decision concerning how soon the planning commission should complete a proposed Hillside Ordinance so long as the decision will not affect the content of the proposed ordinance. This decision would be merely procedural and would not have a foreseeable financial effect on either councilmember or their property.

**Mary L. McMaster A-16-270**

A water district board member was advised that she may not participate in a decision before the water district board that would allow irrigation of areas planted entirely with low water use lawns or turf grasses because there is a reasonably foreseeable material financial effect upon her interest in her business. The business specializes in sustainable landscape design. She was also advised she had a conflict of interest in participating in a decision before the water district board to declare a Stage 4 Water Shortage Emergency for the same reason.

**Gifts****Alan Seem I-16-236**

The requestor organized the 2016 Autumn China Trip, for Silicon Valley mayors, councilmembers, and local business members to travel to China to meet with local Chinese government officials, potential investors, and CEOs from local high tech companies. Due to the fact that a local Chinese government authority paid for the Silicon Valley officials travel, lodging, and meals, and the travel was for the governmental purpose of economic trade and business development with the region, the tour payments would be reportable gifts, not subject to the gift limits. We noted the recent enactment of Section 89506(f), regarding nonprofits that regularly organize and host travel for officials for their future attention.

**Government Code Section 1090****John Mulligan A-17-023**

Section 1090 does not prohibit the City of Sanger from entering into a new contract for engineering services with the corporate consultant that currently provides those services because the consultant “took absolutely no part” in the City’s decisions regarding the new contract’s request-for-qualifications process. The City is a grantee under the federal Community Development Block Grant program and has ongoing projects subject to the new and existing contracts.

**Josh Wilson A-16-269**

A city council member does not have a conflict of interest in a decision to enter into a sponsorship agreement between the City and a business that is a source of income, because he would not be making or participation in making a decision under the Act. Further, Section 1090 does not apply since the sponsorship agreement is not under the authority of the City Council and is approved by an independent official under the direction and control of the City Manager.

**Robert M. Burns A-16-223**

Section 1090 does not prohibit Lassen County employees from purchasing books at a bookstore owned by a current member of the Lassen County Board of Supervisors. There is no contract between the County and the bookstore, and the series of small

purchases occasionally made at the discretion of county staff, without input from the Board of Supervisors, are made on the same terms and conditions as those made by members of the general public. Although these limited purchases involve a contract in the most technical sense, they are not the type of contractual situation Section 1090 seeks to prevent.