



# **Pay to Play No More?**

## ***The Levine Act (SB 1439)***

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### **FPPC Committee Members:**

Rebecca L. Moon, Sr. Asst. City Attorney, Sunnyvale

Amanda Freeman, Sr. Dep. City Attorney, Fresno

Robert Fabela, City Attorney, Anaheim

CalCities Conference, September 22, 2023

# The King of “Pay to Play” Scandals: The Calif. Coastal Commission, 1980

- Three Coastal Commissioners regularly contacted applicants who had pending projects to request campaign donations for themselves and other politicians’ campaigns;
- Took contributions from attorneys and consultants who represented applicants;
- Always voted in favor of their contributors’ projects;
- Contacted applicants after the hearing to request more donations.

*Los Angeles Times*, Mar. 12, 1980



# The Levine Act (1982) Gov. Code 84308

- Aimed at “**pay to play**” corruption  
↳ contributing money for votes
- Only applied to **appointed** board & commission members and elected officials when appointed to another board (e.g. LAFCO).
- **SB 1439 (2022, Glazer)**
  - Closed the loophole for local elected officials



# Levine Act in a Nutshell

## Fundraising Ban

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While a proceeding is “pending” & for 12 mos. after final decision:

- Cannot accept, solicit, or direct a contribution >\$250 from a party, participant with a financial interest, or their agents.

## Disclosure & Recusal

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- Officer must disclose contributions >\$250 received in previous 12 mos. from a party, participant, or their agent.
- Must recuse unless cure is available.

## Parties & Participants

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- Parties, participants, & agents cannot contribute >\$250 during the proceeding and for 12 mos. after final decision.
- Party/agent must disclose contributions >\$250 on the record of the proceeding.

# Implementation of SB 1439

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## Effective Date

- FPPC #0-22-022 (Kendrick): SB 1439 does not apply to contributions received by elected officials prior to Jan. 1, 2023. (A.G. review pending, AG #23-101)
- New FFPC Reg. 18438

## Rule-Making & Advice

- New/amended FPPC Regs §§ 18438 et seq. became effective Aug. 12, 2023.
- New regs and technical advice posted on FPPC website <http://fppc.ca.gov>

*The Levine Act is a short statute; as with other sections of the Political Reform Act, the regulations are key!*

**Here we go...**

# Who is an “Officer” in the Levine Act?

**Officer** = An individual who may make, participate in making, or attempt to influence a decision or exercises authority or budgetary control over those who do. Specifically:

- Elected officials (except judges & the Calif. Legislature)
- Members of appointed boards and commissions
- The chief executive of an agency
- Any official with decision-making authority who was a candidate for elected office in 12 months prior to the decision.

*Gov. Code 84308(a)(4), FPPC Reg. 18438.1*

# Who is a “Party” or “Participant”?

- **Party**: A person who files an application or is subject to a proceeding.
- **Participant**:
  - A person with a financial interest in the decision, and
  - Actively supports or opposes the decision by:
    - Lobbying (direct communication for purposes of influencing)
    - Testimony or public comment during a proceeding
    - Other communications to the agency for purpose of influencing a proceeding.

*Gov. Code 84308(a)  
FPPC Reg. 18438.4*



# Who is an “Agent”?

## Agent:

- A person who for compensation represents a party or participant in a pending proceeding and
- Appears before or otherwise communicates with the agency for purposes of influencing the pending proceeding.
- Law firms, architects, engineers, consultants, and similar entities:
  - Both the individual and their employer are considered “agents”
  - *Limited exceptions for submittal of architectural, engineering, and similar drawings and purely technical data or analysis.*

FPPC Regs. 18438.3, 18438.4

# What is a “Proceeding”?

**Proceeding** = Any proceeding to grant, deny, revoke, restrict, or modify a license, permit or other entitlement for use that does not solely involve purely ministerial decisions and

- Is applied for, or formally or informally requested by the party,  
- or -
- Is a franchise or contract
  - *Except for competitively bid, labor, and personal employment contracts (as defined in the reg).*

Gov. Code 84308(a)(5)  
FPPC Reg. 18438.2(a)

# What is a “Pending” Proceeding?

- **For Officers:**

- A decision is before the officer for their consideration including any item placed on the agenda at a public meeting; OR
- The officer knows/has reason to know that a “proceeding” is “before the agency” for decision/action and it is reasonably foreseeable it will come before the officer in their decision-making capacity.

- **For Parties/Participants:**

- When before the jurisdiction of the agency for decision or action.

*FPPC Reg. 18438.2(b)*

# What Contributions Are Covered by the Levine Act?

Contributions over \$250 that an officer accepts, solicits, or directs to:

- The officer's own campaign or controlled committee,
  - OR, to another candidate's campaign or controlled committee.
- Aggregation rules:
    - Party/participant's contributions must be aggregated with contributions by agent in previous 12 mos. or from date agent was hired as a paid employee, contractor or consultant (whichever is shorter)
    - Entities/individuals are aggregated as required by Gov. Code 82015.5

FPPC Regs. 18438.5, 18438.6

FPPC Reg. 18428

# What is a "Controlled Committee"?

**Controlled Committees** are controlled directly or indirectly by the candidate or officeholder and may include:

- Campaign committees
- Ballot measure committees
- Legal defense funds
- Officeholder controlled committees
- Recall committees

➤ *“Indirect” control means that the candidate, officeholder, or their agent has significant influence on the committee’s actions.*

# What is “Accepting,” “Receiving,” “Soliciting,” and “Directing”?

- **Accept or Receive**: The contribution is made to the officer’s own campaign, or any committee controlled by the officer.
- **Solicit**: The officer/officer’s agent requests a contribution to any campaign or controlled committee, not just their own.
- **Direct**: The officer/officer’s agent solicits a contribution that is subsequently made by the donor.
  - ***Soliciting/directing*** is only unlawful if the officer knows or has “reason to know” the donor is a party/participant/agent. See reg. for exceptions (e.g. mass mailings, mass media, public speeches)

# When Is Disclosure and Recusal Required?

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- Prior to rendering decision, officer must disclose the receipt of any contribution over \$250 from a party, participant, or agent.
- Disclosure must be made on the record of proceeding.
- Recusal is required if the officer:
  - “Willfully or knowingly” received the contribution;
  - Received a contribution from a participant or their agent and had “reason to know” of the participant’s financial interest.

Gov. Code 84308(c)

FPPC Regs. 18438.7, 18438.8

# What is “Willful and Knowing” Receipt of a Contribution?

- Actual knowledge of the contribution; or
  - Party disclosed the contribution as required by the Levine Act; or
  - Other facts including but not limited to:
    - The donor or other person informed the officer of the contribution
    - The donor previously made two or more contributions >\$250
    - The officer personally solicited the contribution
    - The officer personally accepted the contribution
- *Knowledge not imputed solely from required campaign disclosures.*

FPPC Reg. 18438.7(b)



# What is “Reason to Know” of a Participant’s Financial Interests?

- Actual knowledge of the participant’s financial interest, or
- Participant reveals facts that make their financial interest “apparent”
- Presumptions:
  - Real property within 500’ of a project
  - Business entity may see significant increase/decrease in customers
  - Business relationship with applicant may result in more services
  - *Rebuttable with clear and convincing evidence*
  - *More than just an economic interest in the general vicinity*

FPPC Reg. 18438.7(a)

# How to Cure and Participate

- The officer must return the contribution (over \$250) within **30 days** of the time the officer knows or should have known of both  
***“the contribution and the proceeding.”***
- What this means:
  - The contribution was received from a party prior to the officer knowing/having reason to know that a proceeding involving the party has “commenced” (= noticed on an agenda), or
  - The contribution was received from a participant prior to the officer knowing/having reason to know of the participant’s financial interest.

# Curing from the Dais

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An officer may participate in a public hearing before returning a contribution if:

- The decision is made at a public hearing;
- The officer knew/should have known of the contribution and the proceeding for fewer than 30 days;
- Officer discloses the contribution on the record and commits to returning the contribution within 30 days of when the officer knew/should have known of the contribution and the proceeding; and
- The contribution (over \$250) is returned within that time frame.

Gov. Code 84308(d)(1)  
FPPC Reg. 18438.7(c)

# Contributions After a Final Decision

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- It is unlawful to accept, solicit, or direct a contribution from a party, participant, or agent for 12 months after the final decision.
- No cure available if the officer knowingly and willfully accepts, solicits, or directs the contribution.
- If not knowing and willful, contribution must be returned within 14 days of accepting, soliciting, or directing the contribution whichever is later.

Gov. Code 84308(d)(1)

# Legally Required Participation

Amended Reg. 18705 confirms that the “legally required participation” exception applies to Gov. Code 84308. This rule allows a random process to create a quorum when a majority of officials are recused due to financial conflicts.

The legally required participation rule may allow a “strong mayor” with charter-granted veto and approval powers to participate in a decision despite accepting contributions from a party or participant. *FFPC I-23-102 (Granda)*.



# **Hypothetical and Best Practices**



# Hypothetical

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The day after a Council meeting, a Councilmember tells you that they just found out that six months earlier, she had accepted a \$500 campaign contribution from one of the parties whose project was approved the previous evening. The Councilmember did not disclose the contribution the hearing, and she participated in the vote.

What advice do you give the councilmember?

# Answer

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- Review Prof. Rule 1.13
- Advise Councilmember to return the money over \$250
- Rescind and re-vote at the next meeting?
  - Legislative item or contract – yes
  - Land use project? (vested rights?)
- Advise Councilmember in writing to get private ethics counsel



# Best Practices

- Include a section in staff reports indicating whether the matter is subject to the Levine Act.
- Levine Act reminder on agendas.
- Standing agenda item for required disclosures.
- Disclosure question on project application forms.
- Language on bid docs to alert parties of the statute.

City of Anaheim  
COMMUNITY SERVICES DEPARTMENT

DATE: SEPTEMBER 12, 2023

FROM: COMMUNITY SERVICES DEPARTMENT

SUBJECT: LICENSE AGREEMENT BETWEEN CITY OF A  
GOLF FORE LIFE SKILLS

ATTACHMENT (Y/N): YES ITEM #

GOVERNMENT CODE § 84308 APPLIES: YES

RECOMMENDATION:



**Thank you**

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