



**Date:** April 4, 2024

**To:** Honorable Mayor and Council Members

**From:** Glen R. Googins, City Attorney  
Elizabeth Klotz, Assistant City Attorney

**Subject:** Senate Bill 1439 – Campaign Contributions of Greater Than \$250 Can Now Present Conflicts of Interest Requiring Disclosure, Recusal or, in Certain Circumstances, Return of the Contribution

The purpose of this memorandum is to provide information regarding new conflict of interest laws governing campaign contributions that now apply to City Councilmembers. The new law, commonly known as the “Levine Act,” makes campaign contributions of greater than \$250 received or solicited by local **elected officials** “financial interests” for conflict-of-interest purposes. Prior to January 1, 2023, such rules only applied to certain **appointed officials**. Although in effect for some time, the Levine Act has not had practical significance for this Council until now, since the Council “Election Cycle” allowing for campaign contributions is set to begin on May 1, 2024.

Details of the Levine Act are provided below. For all potential candidates who may be active in the upcoming Election Cycle, some practical tips are also provided to help you track campaign contributions at issue and facilitate compliance with the Act’s disclosure and recusal requirements.

**1. Prohibitions on Receipt of Campaign Contribution from a Party or Participant in Excess of \$250 Where a Related Action is Pending**

A. General Rule.

Beginning January 1, 2023, local elected officials **may not accept, solicit, or direct contributions** of more than \$250 from a party or participant, or agent thereof, (“Contributing Party”) where such Contributing Party has proceeding for approval of a license, permit, contract or other entitlement before such local officials as decision makers. This prohibition continues for 12 months following the date of the final decision in the proceeding, and applies whether the local elected official accepted, solicited, or directed the contribution on such official’s own behalf, or on behalf of any other official, or on behalf of any candidate for office or on behalf of any committee.

B. Key Definitions.

1. What is a “Pending Proceeding”?

A “proceeding” covered by the Levine Act involves an action to grant, deny, revoke, restrict or modify “licenses, permits, or other entitlements for use.” Included in this are all business, profession, and trade licenses and permits, and other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor or personal employment contracts) and all franchises. Note: Decisions on general plans, general building or development standards or other rules of general application are not covered, as well as purely ministerial decisions where no discretion is exercised.

A proceeding is “pending” under the Levine Act when: (1) an application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction of an agency for its determination or other action; and (2) the proceeding is of a type about which the officers of the agency are required by law to make a decision, or the matter has been submitted to those officers for their decision.

2. Who is a “Party, Participant or Agent”?

A “party” is any person (including a business entity) who files an application for, or is the subject of, a proceeding involving a license, permit or other entitlement for use.

A “participant,” while not an actual party to the proceeding, is anyone who: (1) actively supports or opposes a particular decision (e.g., lobbies the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence the officers of the agency); and (2) has a financial interest in the outcome of the decision. Most notably, **“participants” include non-parties who actively support or oppose a particular decision and who have a financial interest in the decision.** As an example, a close neighbor to a property that is the subject of a land use decision may be a “participant” even if the neighbor’s property is not the subject of the decision.

An “agent” of a party or participant is an individual or firm who represents a party or a participant in a proceeding. If an agent is an employee or member of a law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered “agents” for Levine Act purposes.

C. Example:

Here’s a simple example of how these rules might apply: A developer has submitted an application for a residential project on City property. Since April, City staff has been actively negotiating a development agreement for the project with the developer. In May, during the City’s “Election Season,” a council member receives a \$320 campaign contribution from a lobbyist working on the project. Under the Levine

Act, that lobbyist is considered a “participant” in the project, and this campaign contribution is prohibited. Note: See Section 3, below, for how the Council member might return the contribution and “cure” the violation.

## **2. Disclosure and Recusal Requirements For Council Proceedings Occurring within Twelve Months of Contributions from a Party of Participant in Excess of \$250**

Even where the matter is not “pending” at the time of the contribution, local elected officials are now required to **disclose on the record** and **recuse themselves** from any proceeding involving a license, permit, or other entitlement for use, if they willfully or knowingly received a campaign contribution of more than \$250 from a party or participant within the previous 12 months leading up to the decision.

Here’s a simple example of how these rules might apply: In October, during election season, a council member receives a \$251 campaign contribution from their neighbor. The following January, the City receives an application to construct a movie theater on a vacant lot across from the neighbor’s home. Since January, the neighbor has been actively writing to City officials and participating in community meetings, commission meetings and the City Council meeting to oppose the project. Because the neighbor has been actively engaged with the City on the project and has a financial interest in the outcome of the decision, they are considered a “participant” under the Levine Act. The council member that received the campaign contribution is required to disclose on the record and recuse themselves from participating on the matter unless they are able to cure the violation as provided in Section 3, below.

## **3. Ability to “Cure” Potential Violations**

### **A. Curing a Violation During a Pending Decision**

Disclosure and Recusal may not be required if an otherwise disqualifying campaign contribution is returned within 30 days of actual or “constructive” knowledge of the donation. (Constructive knowledge means that based on the facts and circumstances, someone should have known that they had a disqualifying campaign contribution.) If an elected or appointed official receives a contribution that will otherwise require disqualification under Section 84308, they may participate if they return the contribution amount over \$250 within 30 days from the time they know or should know about (1) the contribution and (2) the proceeding.

### **B. Curing a Violation After a Final Decision**

For 12 months after a final decision is rendered, an elected or appointed official must not accept, solicit or direct a contribution of more than \$250 from the party or participant if such official knows or has reason to know the party, participant or the party’s or participant’s agent has a financial interest in the decision.

Similar to the cure provisions applicable to donations while a decision is pending, if a local elected official accepts, solicits, or directs a contribution of more than \$250 during the 12 months after the date a final decision is rendered, the violation can be cured by returning the contribution, or the portion of the contribution in excess of \$250, provided that the contribution is returned within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest. This cure option is only available if the local elected official did not knowingly or willfully accept, solicit, or direct the prohibited contribution.

#### **4. Disclosure and Prohibition Requirements of Entities Doing Business with the City**

Levine Act provisions also regulate the conduct of individuals or businesses with matters pending before the City.

A party to a proceeding before the City Council involving a license, permit, or other entitlement is required to disclose on the record of the proceeding any contribution in an amount of more than \$250 made within the preceding 12 months by the party or the party's agent. The party is also prohibited from contributing more than \$250 to any officer of that agency during the proceeding and for 12 months following the date of the final decision.

A council member may cure a violation before a decision and lawfully participate only if they did not knowingly and willfully accept, solicit, or direct the prohibited contribution. They can participate if they disclose the amount of any contribution(s) made within the preceding 12 months and the names of the contributors. The contribution amount over \$250 must also be returned within 30 days from the time they know, or should have known about the contribution.

#### **5. New Levine Act Provisions for Elected Officials Apply Only to Campaign Contributions Accepted, Solicited or Directed After January 1, 2023, but Levine Act Provisions for Appointed Officials (including Election Officials Simultaneously Serving in an Appointed Capacity) continues to Apply for Campaign Contributions Received in 2022.**

On December 22, 2023, the Fair Political Practices Commission (FPPC) issued an opinion that SB 1439 applies prospectively, in other words, it only applies to campaign contributions accepted, solicited or directed after January 1, 2023 for elected officials serving on the City Council and for decisions before the City Council.<sup>1</sup>

It is important to note, however, the Levine Act continues to apply to campaign contributions received in the prior 12 months to appointed members of Santa Clara

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<sup>1</sup> <https://www.fppc.ca.gov/content/dam/fppc/documents/Opinions/Kendrick.pdf>

boards and commissions with decision making authority AND to members of the Santa Clara City Council who serve in an appointed capacity on another agency or board (e.g., VTA, NCPA, etc.) and are voting on decisions before that other agency or board.

## 6. Violations

The FPPC is responsible for actively monitoring compliance by local officers with the Levine Act. Violation of the Levine Act carries with it administrative, civil, or criminal penalties. (CA Gov't Code §91000)

## 7. Practical Steps to Facilitate Compliance

### A. Applicant Disclosure Statement.

Agencies subject to the Levine Act can require parties seeking Council approval of a qualifying license, permit, contract or entitlement to complete a document along with their application that both advises them of Levine Act requirements and requires disclosure of whether they have contributed or intend to contribute more than \$250 to the campaign of one of their decision-makers. To assist both City officials and applicants with Levine Act compliance, starting in May City staff will be implementing such a requirement in Santa Clara. A sample of the current draft Levine Act Disclosure Statement is attached.

### B. Notice of Levine Act Requirements to be Added to Agendas.

Starting in May, City staff will also start to include the following language on agendas for City Council meetings and for other City Quasi-Judicial Bodies (e.g., Planning Commission), with a link to the SB 1439 Levine Act Disclosure Statement:

**[California Government Code Section 84308](#), most recently amended by SB 1439, commonly referred to as the "Levine Act," prohibits a local elected official or quasi-judicial appointed official from participating in any action related to a contributor's contract, license, permit, or use entitlement if he/she/it receives any campaign contributions totaling more than \$250 within the previous twelve months, and for twelve months following the date a final decision has been made, from the party, participants, or agents in the proceeding. Parties, Participants or Agents for a proceeding involving a license, permit, or other use entitlement pending before the City Council or a City quasi-judicial body must complete the SB 1439 California Levine Act Disclosure Statement prior to their proceeding.**

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C. Council Members Should Monitor Campaign Contributions and Communicate with Staff in Advance of Council Action.

The Levine Act does not require that the City or City Staff track campaign contributions exceeding \$250. Elected and Appointed Officials should carefully monitor their campaign contributions exceeding \$250 to avoid a potential Levine Act issue from arising that could bar them from participating on a potential agenda item. Take any action to “cure” the issue in a timely manner. If an item appears on an agenda where Levine Act disclosure and recusal may be necessary, please notify staff as soon as possible.

D. Disclosure

Make sure to publicly disclose and return campaign contributions in a timely matter. Consider whether your contribution has been “knowingly” received or whether you have sufficient information to establish knowledge of a participant’s financial interest.

Staff intends to develop more policies and procedures to facilitate Levine Act compliance in the months to come. We will keep the City Council apprised of these efforts. In the interim, please contact our office should you have any questions regarding the requirements of the Levine Act or other measures that may be taken to assure compliance.

Cc: Office of the City Manager  
Office of the City Clerk