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California's New Campaign Contribution Regulations, What Local Governments Need to Know: Q&A Responses

Definitions (Statute and Regulations)

- Can you review the competitive bid exception again? Does that mean they can accept over 250 but they still cannot vote to approve the contract that was competitively bid?

An officer who has accepted a donation exceeding \$250 in the 12 months preceding a decision on the donor's *competitively bid* contract can still participate in the proceeding, and is not required to return the excess portion of the contribution. Competitively bid contracts are required by law to be awarded to the lowest responsible bidder, as opposed to non-competitively bid contracts that allow officers more discretion in awarding the contract. (Regulation 18438.2(a)). Under Government Code section 84308(a)(5), the definition for proceedings involving a "license, permit, or other entitlement for use" expressly excludes competitively bid contracts.

- Does proceeding only mean agency decisions made by the officer(s)? Or does agency decision (staff for example) trigger this? Ex: permits processed by staff for use of a venue managed by the agency.

A permit application involving a purely ministerial decision by agency staff is not covered under this law. For purposes of section 84308(c), the recusal requirement, the officer must appropriately disclose and recuse before he or she renders a decision in the proceeding to grant, deny, revoke, restrict, or modify the permit. (Regulation 18438.2(a)).

- Does "party" or "participant" refer only to natural persons? Or does it refer to an entity as well?

No, non-human entities can be "parties" or "participants." A party, participant, or even their agent is a "person," defined under Government Code section 82047 as an "individual, proprietorship, firm, partnership, joint venture, syndicate, business trust, company, corporation, limited liability company, association, committee, and any other organization or group of persons acting in concert."



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- Are corporate consultants considered participants?

Consultants may qualify as agents or participants depending on their involvement in a proceeding. A consultant that represents a party or participant for compensation and “appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding” constitutes an agent and would be covered under this law. (Regulation 18438.3). A consultant can also function as a participant if he lobbies, testifies in person, or otherwise communicates with the agency officer and has a financial interest. Officials would be well-advised to not accept contributions of more than \$250 from consultants working for the agency.

Application of Concepts

- Does \$250 limit apply only to those on the legislative body at the time of decision or would it apply to new members seated during the 12 months after the decision too?

The requirements under section 84308 follow the specific agency officer involved in a proceeding or receiving a donation. In other words, a new councilmember who did not participate in a proceeding involving the donor 12 months ago is not subject to the fundraising ban simply because he currently serves on the Council with another councilmember who participated in that proceeding and is subject to that ban.

- Would the official’s signature on the form 460 qualify as “knowing” about the contribution?

An officer, without actual knowledge of a contribution from a party or a participant with a financial interest, does not have a reason to know of the contribution “based solely on the fact that the contribution was previously reported” under the Political Reform Act. The Commission’s adoption of Regulation 18438.7(b) reflects the practical reality that candidates for political office are not expected to memorize the names and donation amounts of their numerous contributors listed on disclosure forms. Therefore, the officer’s signature alone likely does not constitute “knowing” receipt of a prohibited contribution.

- Does an employee, not an owner, have a financial interest in a decision?

Employees of a business that may see a significant increase or decrease in customers as a result of a proceeding likely have a financial interest.



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- If a public member is opposed to a development project, lives within 500' and contributed to a Councilmember- is the public member a "participant" and the Councilmember has to recuse?

The individual - if they contributed more than \$250 - must lobby or testify in person or otherwise act to influence the officer as defined under Regulation 18438.4. As to his financial interest, for the purposes of section 84308, the individual who lives within 500 feet of the *real property at issue in the proceeding* has a financial interest such that the Councilmember would have to recuse.

- What are the ramifications if multiple employees of a developer each make single \$250 donations to an officer?

It depends on whether these individuals qualify as agents or participants of the party. All contributions made by an individual must be aggregated with the party or participant and any agent of the party or participant. However, the officer would not violate section 84308 if he has "no reason to know a contribution from an individual or entity is required to be aggregated with a contribution from the party or participant and any agent of the participant." (Regulation 18438.5). This would mean that the party, agent, or participant failed to disclose the contribution and the record and the officer is not aware of facts to establish that the contributions should have been aggregated. In that case, the contributions would be considered separately.

- How does the law apply to a CBO or representative employed by a CBO who is instead acting in their personal citizen role as cbo -employee/board member?
A community-based organization (CBO) can be considered a party or even a participant to a proceeding under section 84308. Any representative of the CBO who appears as an agent for the party or participant, and not in their individual capacity, is likewise covered under the law.
- Are spouses who have no involvement or hold an interest in a business subject to SB 1439 aggregated in the contribution limits?

The new law and regulations do not require an officer to aggregate the contributions of a donor's spouse based on the relationship alone. Whether the spouse's contributions should be aggregated hinges on the spouse's actual involvement in the subject proceeding. A spouse may constitute a party or a participant with a financial interest (related to a business entity that may be significantly impacted by the decision or business relationship with the applicant) to a proceeding such that her contributions would need to be aggregated under certain circumstances.



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- Have you considered how the new regulations will affect Strong Mayors who do not sit on the Council but have veto power?

A “proceeding,” defined broadly under Regulation 18438.2, would include a Strong Mayor’s decision to either veto or sign a city council decision. During the June 15, 2023 meeting, the FPPC General Counsel noted that the Commission had no statutory authority to exclude California’s 5 Strong Mayors from the regulations. FPPC’s Counsel noted that he previously received a request for advice on this matter from the San Diego Mayor’s office, and planned to respond after the regulations were adopted.

- Would this have any impact on contributions made to your own campaign?

No, the new provisions relate to contributions made to local elected or appointed officials from parties, participants, or their agents. Officials cannot participate in decisions regarding their own applications or where they have another conflict related to a financial interest, so SB 1439 is not relevant to donations to one’s own campaign committee and did not change the law on that subject.

Disclosure Forms/Tracking Contributions

- Does the city clerk have to track these contributions on behalf of the agency or is the responsibility on the officer to make known the receipt of a disqualifying condition?

No, the officer and his committee are responsible for tracking these contributions and self-regulating where necessary. Given the stakes for all involved, however, staff will have to determine whether to, and how to, assist officials with compliance.

- Do you have any tools to track donations to ensure Councilmembers abstain from voting due to conflict?

The law and regulations do not actually require candidates, officers, or the agency to track donations, but they may choose to do so as a practical matter. Several cities have introduced donation disclosure forms for parties and agents based on the separate requirement under Government Code section 84308(e) for parties to disclose their own and their agent’s contributions on the record. While these are useful tools to ensure compliance, completion of the disclosure form is voluntary and does not satisfy the party’s separate requirement to disclose under Government Code section 84308(e). If an officer’s jurisdiction does not provide such forms to parties, councilmembers and their campaign committees should consider self-tracking.



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- Is the filing official responsible for tracking contributions to Councilmembers' campaigns to ensure compliance?

SB 1439 did not create new duties for filing officials to track contributions, however, individual jurisdictions may decide to implement some type of tracking system to assist with compliance. At a minimum, education of officials, parties, agents, and participants will be critical.

Curing Violations/Recusal

- What happens if the majority of the council needs to recuse themselves?

The FPPC recently amended Regulation 18705 on “Legally Required Participation” to include Government Code section 84308 conflicts in the list of situations to which that rule applies. If a majority of the city council is required to recuse themselves due to having received contributions in excess of \$250 from a party or a participant with a financial interest, councilmembers who received disqualifying contributions may establish that they are legally required to make or participate in the government decision since there would be no alternative source of decision if a quorum is not achieved. The regulation regarding “Legally Required Participation” would apply only if a quorum, or the minimum number of members required to conduct business, cannot be convened due to recusals. The councilmembers would need to disclose the prohibited contribution(s) over \$250 received within 12 months that caused recusal, and the name of the party or participant who made the contributions. The smallest number of officials with a conflict that are “legally required” to participate will then be randomly selected to return to participate in considering the matter.

- Does the campaign committee still have to be active in order to return the contribution? What if the committee was terminated?

The FPPC has not yet addressed this scenario, to our knowledge.

- If within the 30 days of the proceeding, you cure the violation. Do you still need to announce the contribution?

The contribution must be disclosed, and the officer or his controlled committee must maintain records of curing the violation under Government Code section 84308(d)



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- What is the consequence if a member doesn't return a contribution on time?

A failure to return a prohibited contribution within the required time period to cure a violation could expose an officer to an FPPC Enforcement Division action.

- If the Councilmember returns the excess donation, do they still recuse?

It depends on whether the councilmember properly disclosed the donation and promised to return the amount within 30 days *prior* to participating. If so, the councilmember does not need to recuse, but he must also then actually return the excess amount within the 30 days.

- Can contributions be made within the 12 month period that occurs after the decision making that an officer has refused themselves from?

During the 12 month fundraising ban period, the officer cannot accept a contribution from the party in the proceeding. But the officer can continue to accept other contributions that are not subject to the post-decision ban.

- Should a councilmember recuse themselves when approving a workplan and budget of a city committee. when their spouse is the chair?

This question is not related to the changes under SB 1439. Generally speaking, elected officials should consider recusal, even if not legally required, from a decision where necessary to avoid the appearance of impropriety.

FPPC's Role

- Will the FPPC put out a new FAQ on these regulations now that they've been adopted?

FPPC staff provided a presentation on the new amendments prior to adoption. The Commission previously published an updated informal [fact sheet](#) on the changes to Section 84308, but we are not aware whether staff will publish a corresponding fact sheet on the amended regulations.

During the June 15, 2023 meeting, Commission Counsel noted that he would respond to the San Diego Mayor's Office request for advice on the impact of these regulations on strong mayors and the application of the legally required participation exception.



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Chairman Madich noted that the Commission would continue to provide guidance through advice letters and suggested that the Commission regularly review [advice letters](#) to anticipate necessary future changes to the regulations.

- Where do violations get reported?

The FPPC Enforcement Division investigates potential violations.

Miscellaneous

- What responsibility does the agency have to communicate these rules to the members?

The agency itself is not responsible under the law, but may opt to do so in order to avoid conflicts. Education is an important tool for public agencies to protect officials, and also to help avoid public controversies.

- Can you repeat what we're supposed to know about contribution to a PAC?

Contributions to political action committees are not impacted by SB 1439.

- Any changes with Federal donation guidelines?

SB 1439 does not change federal laws on campaign contributions, however, contributions to candidates for federal office are still subject to these provisions.