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## **New Law Extends Recusal Requirements and Prohibits Certain Contributions for Local Elected Officials**

On January 1, 2023, local elected officials will be subject to a state law designed to prohibit “pay-to-play” politics in California. Senate Bill 1439, which amended Government Code section 84308, applies existing state laws to local government agencies, including city councils, for the first time. Significantly, among other changes, the law provides:

- **Recusals:** Local elected officials will be prohibited from taking part in licensing, permitting, and other use entitlement proceedings involving a party or participant who has contributed more than \$250 to the official within the 12 months prior to the proceeding; and
- **Contribution restrictions:** Local elected officials will be prohibited from receiving a contribution exceeding \$250 from a party or participant in a licensing, permitting, or other use entitlement proceeding during the time the matter is pending before the agency and for 12 months after the final decision is made in the matter.

**Elected officials should ensure they have a method in place to track and review campaign contributions accepted in the previous 12 months, to prepare for any required recusals from related matters going forward. The voting ban lasts for 12 months after receiving a disqualifying contribution. The Ethics Commission’s Education Program staff is available to assist with questions.**

Elected officials should also be mindful of contributions they accept going forward, given the reach of this law. Although there are “cure” provisions, they are limited. Enforcement would not involve an official’s participation in votes cast during 2022, but is prospective, beginning January 1, 2023. Violations are a misdemeanor under state law.

The League of California Cities and government attorneys have questioned the law’s retroactivity, as it is drafted to require elected officials to recuse themselves from proceedings in 2023 due to contributions they accepted in 2022. On November 3, 2022, counsel for the Fair Political Practices Commission (FPPC) released a memorandum opining

that contributions given to elected officials in 2022 should preclude their participation in matters related to entitlement proceedings in 2023. The law is drafted to require such recusals in 2023, even though the law was not effective at the time the elected official would have accepted a disqualifying contribution in 2022.

The FPPC is scheduled to discuss the implications of the new law, including the FPPC attorneys' opinion regarding retroactivity, at its November 17, 2022 meeting and to issue a final legal opinion thereafter. (See [www.fppc.ca.gov](http://www.fppc.ca.gov) to access the agenda and to watch the meeting.)

The following definitions apply to the contributions at issue:

- **“Party”** means any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.
- **“Participant”** means any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision, as described in Article 1 (commencing with Section 87100) of Chapter 7. A person actively supports or opposes a particular decision in a proceeding if that person lobbies in person the officers or employees of the agency, testifies in person before the agency, or otherwise acts to influence officers of the agency.

Going forward, elected officials should note provisions in the law for an official to promptly return a contribution during a “cure” period. This may be important if the elected official wishes to be able to participate in a proceeding, despite receiving a related contribution. Officials can contact our office for guidance if this situation arises, as the FPPC may provide updated guidance in the coming weeks. For example:

- **Prior to an agency decision:** An official can consider returning a contribution, so the official has not accepted more than \$250 from the party or participant and can then participate in proceedings.
  - If an official receives a contribution that would otherwise require disqualification and returns it within 30 days from the time the official knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, the officer shall be permitted to participate in the proceeding.
- **For 12 months after an agency decision:** If an elected official accepts, solicits, or directs a prohibited contribution within 12 months after a decision, then the violation can be cured if:
  - the contribution, or the portion that exceeds \$250, is returned within 14 days of accepting, soliciting, or directing the contribution – whichever is latest; and
  - the official did not knowingly accept, solicit, or direct the contribution.

The Ethics Commission is monitoring the law and awaiting additional guidance from the FPPC in preparation for the January 1, 2023 effective date. Please contact our office with any questions and check our website for additional updates. We will incorporate this law into the Commission's training sessions.

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The Ethics Commission is an independent City entity dedicated to monitoring, enforcing, and reforming the City's ethics laws. The Commission has jurisdiction over City laws regarding ethics, campaign finance, and lobbying. Commission staff provide the regulated community with education and advice regarding ethics laws, conduct investigations, audit City campaign committees, and propose related legislation.

For more information, we invite you to visit our website, [www.sandiego.gov/ethics](http://www.sandiego.gov/ethics), or to contact our office at [ethicscommission@sandiego.gov](mailto:ethicscommission@sandiego.gov).