



STAFF REPORT

September 13, 2023
File Number 0680-10

SUBJECT

REVIEW OF CAMPAIGN CONTRIBUTION LIMITS –

DEPARTMENT

City Clerk's Office

RECOMMENDATION

Request the City Council review campaign contribution limits and related campaign control amendments.

Staff Recommendation: None (City Clerk's Office: Zack Beck, City Clerk)

Presenter: Zack Beck, City Clerk

BACKGROUND

On June 14, 2023, Councilmember Morasco requested an item be placed on the future agenda regarding the impacts of recent changes to California State Law on campaign contribution limits in Escondido. The item was placed on the August 16, 2023 Council Meeting agenda. During the August 16 Council Meeting, Mayor White moved the item to September 13, 2023.

PREVIOUS ACTION

On November 18, 2020, the City Council adopted Ordinance No. 2020-27 which states that, *"No person other than a candidate shall make, and no campaign treasurer shall solicit or accept, any contribution which will cause the total amount contributed by such person with respect to a single election in support of or opposition to such candidate, including contributions to all controlled committees supporting such candidate, to exceed one thousand dollars (\$1,000.00) for any single election for a city council district office, or to exceed one thousand seven hundred fifty dollars (\$1,750.00) for any single election for the office of mayor or city treasurer."*

In 2020, the California Legislature passed Assembly Bill (AB) 571, which applies a default campaign contribution limit to city candidates when the city has not already enacted a contribution limit. The 2023-2024 contribution limits for city candidates in cities that have not enacted limits is \$5,500. Please note that none of the provisions of AB 571 apply to candidates in Escondido, since the City has enacted campaign contribution limits. However, the City of Escondido can adjust campaign contribution limits by modifying Ordinance No. 2023-14 (Attachment 1)



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In 2022, the California Legislature passed Senate Bill (SB) 1439, a bill that amended Section 84308 of the Political Reform Act. The changes took effect on January 1, 2023. SB 1439 provides that local elected officials – including city council members – are now required to “conflict out” of certain proceedings involving persons that made contributions to their respective political campaigns. The statute also prohibits officials from accepting, soliciting, or directing contributions exceeding \$250 from a party to or participant in the proceeding, or their agents, while such a proceeding is pending and for 12 months after the final decision in the proceeding.

On June 15, 2023, the Fair Political Practices Commission (FPPC) adopted new and amended regulations, to clarify some of the questions raised by public agencies as to how to implement SB 1439. Many questions still remain as to how the new law will work in practice. Highlights of the new and amended regulations include:

- **Applicability.** The FPPC confirmed that the Levine Act’s amended provisions do not apply to contributions made or received, or proceedings participated in, prior to January 1, 2023, for elected officials.
- **Definition of “Pending” Proceeding.** The FPPC created a context-specific approach to determining when a proceeding is “pending” for purposes of the Levine Act.
 - *With respect to officers,* a proceeding is considered “pending” when (1) the decision is before the officer (for members of the governing body, this includes when the item is placed on the agenda for discussion or decision at a public meeting of the body) or (2) it is reasonably foreseeable the decision will come before the officer and the officer knows or has reason to know the decision is within the jurisdiction of the agency.
 - *With respect to a party or participant,* a proceeding is “pending” once the entitlement for use decision is within the jurisdiction of the agency (e.g., once the application has been filed). This means parties and participants must refrain from making contributions exceeding \$250 to an officer, once an application has been filed with the agency, even though the decision has not yet come before the officer. However, officers would not be at risk of violating the Levine Act by accepting a contribution from a party or participant in instances where the officer does not know or have any reason to know about the proceeding.
- **Definition of “Knows or Has Reason to Know.”** Under the Levine Act, when an officer knows or has reason to know that a participant has a financial interest in a proceeding, the officer is prohibited from accepting, soliciting, or directing a contribution exceeding \$250 from the participant. Likewise, an officer is prohibited from taking part in a proceeding if, within the preceding 12 months, the officer has willingly or knowingly received a contribution exceeding



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\$250 from a party or party's agent, or participant or participant's agent if the officer knows or has reason to know of the participant's financial interest in the decision.

- The FPPC has clarified that an officer knows or has reason to know of a participant's financial interest in a decision only if the officer has actual knowledge of the financial interest, or the *participant reveals facts in written or oral statements during the proceeding* before the officer that make the person's financial interest apparent.
 - While all relevant facts should be considered, an official aware of the following facts has reason to know of a participant's potential financial interest and may not take part in the proceeding if the official has received a disqualifying contribution from that participant or participant's agent:
 - The participant has an interest in property within 500 feet of the real property at issue in the proceeding;
 - The participant has an economic interest in a business entity that may see a significant increase or decrease in customers as a result of the proceeding; or
 - The participant has a business relationship with the applicant that may result in additional services provided to the applicant.
 - An officer *does not know* or have reason to know of a participant's financial interest in a decision solely as a result of the participant identifying an economic interest located in the general vicinity of a business entity or real property at issue in the proceeding. (Amended Regulation 18438.7.)
- **Willful or Knowing Receipt of a Contribution.** The FPPC has provided details as to when an officer is considered to have willfully or knowingly received a contribution, and has clarified that an officer without actual knowledge of the contribution from a party or participant does not have reason to know of the contribution based solely on the fact that the contribution was reported as required by law. (Amended Regulation 18438.7.)
 - However, an officer does have reason to know of a contribution previously reported under the Act's reporting provisions made by a *party* in a proceeding *noticed on an agenda* for a public meeting before the body or board or, for officers not on a body or board, where the proceeding is otherwise before the officer in the officer's decision-making capacity. (Amended Regulation 18438.7.)
- **Learning of a Contribution During a Meeting.** An officer who learns of a participant's financial interest or contribution *during the proceeding* must disclose the contribution prior to any further



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participation in the meeting. The officer may still take part in the proceeding if the official discloses the disqualifying contribution on the record, confirms that it will be returned within 30 days following the time the officer knew or should have known about the contribution, and the contribution is returned within that timeframe. (Amended Regulation 18438.8; Amended Regulation 18438.7)

- **Party's Obligation to Disclose Contributions.** On the date a party to a proceeding files an application or other request initiating the proceeding, the party must disclose the amount of any contribution(s) made within the preceding 12 months and the names of the contributors. For a contribution made during any stage of the proceeding, the party must disclose the contribution within 30 days of making the contribution, or on the date on which the party makes its first appearance before or communication with the agency regarding the proceeding following the contribution, whichever is earliest. (Amended Regulation 18438.8.)
- **Definition of "Officer."** The FPPC revised the definition of "officer of the agency" to provide that an "officer" is an individual who may make, participate in making, or attempt to influence a decision in the proceeding or who exercises authority over officers who may do so. The definition specifically includes an individual who is a candidate for elected office or who has ***been a candidate in the 12 months prior to the decision.*** (Amended Regulation 18438.1.) This means that the Levine Act applies to an officer even if the officer has already lost the election.
- **Definition of "Agent."** The FPPC clarified that a person acting as the representative of a party or participant in a proceeding must also be ***compensated*** in order to be considered an "agent" for purposes of the Levine Act. (Amended Regulation 18438.3.)
- **Aggregation.** Contributions made by a party and a party's agent, or a participant and a participant's agent, are aggregated for purposes of the Levine Act's \$250 limit. The FPPC clarified the rules regarding aggregation, and specifically excluded ***uncompensated officers of nonprofit organizations*** from the aggregation requirement. (Amended Regulation 18438.5.)
- **Legally Required Participation.** Applies "legally required participation" exception to officers otherwise disqualified under the Levine Act. (Regulation 18705.)

City of Escondido Ordinance No. 2019-07 requires online or electronic reporting of contributions and independent expenditures regarding elections of candidates to city offices in order to facilitate review and maximize the availability of this information to the public. Those contributions are available for the public to view on the City's Website at the following link: <https://public.netfile.com/pub2/?AID=ESC>

In order to comply with SB 1439, the City Clerk's Office will monitor campaign contributions and work with the City Attorney's Office to determine when an officer is prohibited from taking part in a proceeding.

ATTACHMENTS



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- a. Attachment 1 – Ordinance No. 2023-14