



## SB 1439: THE LEVINE ACT CITY OF LINCOLN FREQUENTLY ASKED QUESTIONS

### **Background:**

California Government Code Section 84308 (the "Levine Act") prohibits any officer of the City of Lincoln (defined as an elected or appointed officer, alternate, and any candidate for elected office) from participating in any consideration or action related to a proceeding if they receive political contribution(s) from a party or its agent(s) totaling more than \$250 within the previous 12 months, while a proceeding is pending, and for 12 months following the date of a final decision in a proceeding concerning a license, permit, other entitlement for use, franchise, or contract (collectively, "proposal or application").

City officers are listed here:

- Members of the City Council: <https://www.lincolnca.gov/CityCouncil>
- Boards and Commission Members: <https://www.lincolnca.gov/BCC>

The following are responses to frequently asked questions regarding the impact of the Levine Act on contributions to elected or appointed officials.

### **1. What is the prohibition on the officer?**

Officers may not accept, solicit, or direct contributions of more than \$250 from a party, a party's agent, or from any participant or a participant's agent if the officer knows or has reason to know that the participant has a financial interest in the decision, (1) while a proceeding involving a license, permit, or other entitlement for use is pending before the officer, and (2) for 12 months after a final decision.

This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution on the officer's own behalf, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

### **2. Is the prohibition on the officer applicable to contributions received before January 1, 2023?**

It depends. On December 22, 2022, the Fair Political Practices Commission (FPPC) issued an opinion and promulgated regulations that SB 1439 only applies to campaign contributions accepted, solicited or directed after January 1, 2023.

However, the Levine Act continues to apply to campaign contributions received in the prior 12 months (in the 2022 calendar year) to members of the City Council who serve in an appointed capacity on another agency or board and are voting on decisions before that other agency or board.

Similarly, the Levine Act continues to apply to campaign contributions received in the prior 12 months (in the 2022 calendar year) to members of boards or commissions.

### **3. What is a contribution and are contributions aggregated?**

A contribution is defined as contributions to candidates and committees in federal, state or local elections. A contribution does not include donations to the City or Council Offices for City-sponsored special events.

Contributions are aggregated in a 12-month period. A \$200 campaign donation made to an officer by a party or the party's agents in February 2023 must be added to a \$50 contribution by that party or the party's agents in March 2023. Campaign committees should monitor contributions for compliance with fundraising ban and the recusal requirement, and multiple small donations must not exceed \$250 within a 12-month period.

### **4. What is the prohibition on parties, participants and their agents on contributions?**

A party, party's agent, participant, participant's agent, to a proceeding pending before the City shall not contribute more than \$250 to any officer during the proceeding and for 12 months following the date of a final decision.

### **5. Who is an officer?**

"Officer" means any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elective office in an agency. In Lincoln, this would include the Mayor, Councilmembers, and any appointed members to a commission or board that would preside over a proceeding involving a license, permit, or other entitlement for use.

### **6. What is a proceeding that involves a license, permit, or other entitlement for use?**

The proceeding must involve an action to grant, deny, revoke, restrict or modify contracts, licenses, permits, or other use entitlements for any business, professional, trade, franchise and land use matters, and other use entitlements.

A proceeding does not include competitively bid lowest qualified bidder contracts where the bidders submit fixed amounts in their bids and the City is required to select the lowest qualified bidder with no discretion in awarding the contract. A proceeding also does not include labor collective bargaining agreements or personal employment contracts involving City employees. In addition, a proceeding does not include decisions on general plans, general building or development standards or other rules of general application, as well as purely ministerial decisions where no discretion is exercised.

### **7. When is a proceeding pending?**

A proceeding is pending for an officer when the decision is before the officer's consideration as an item on a public meeting agenda, or officer knows or has reason to know the proceeding is before the City for its decision and it is reasonably foreseeable that decision will come before the officer.

A proceeding is pending for a party, participant, or agent when an application has been filed with the City, even though the decision has not yet come before the officer.

## **8. Who is a party?**

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.

When a closed corporation is a party to, or a participant in, a proceeding involving a license, permit, or other entitlement for use pending before an agency, the majority shareholder is subject to the disclosure and prohibition requirements.

## **9. Who is a participant and when do they have a financial interest in the decision?**

A participant, while not an actual party to the proceeding, is anyone who (1) actively supports or opposes a particular decision (e.g., lobbies officers or employees, testifies in person before the City, or otherwise acts to influence the officer); and (2) has a financial interest in the outcome of the decision.

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.

The officer must have actual knowledge of the participant's financial interest or the participant reveals facts during the proceeding that make that person's financial interest apparent, giving the official a reason to know about the financial interest, such as:

- Property interest within 500 feet of the real property at issue in the proceeding;
- Economic interest in a business entity that may see a significant increase or decrease in customers as a result of the proceeding; or
- 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 from the participant identifying an economic interest in the general vicinity of a business entity or real property at issue in the proceeding.

## **10. Who is an agent?**

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.

**11. When must an officer disclose and recuse themselves from participating in the proceeding?**

Officers who “willfully or knowingly” received a contribution of more than \$250 from a party, participant with a financial interest, or agent in the 12 months before a proceeding cannot make, participate in making or attempt to use their official position to influence the decision. The officer must disclose receipt of the contribution in the record of the proceeding and recuse themselves unless there is an exception to recusal or they cured the violation before the proceeding. Disclosure under the Levine Act does not relieve the officer from any other campaign contribution reporting requirements under local and state law.

**12. When does an officer “willfully or knowingly” receive a contribution?**

It is “willful and knowing” when the officer has actual knowledge that the contribution came from someone with a connection to a pending proceeding, or aware of facts establishing other reasons to know of the contribution. A campaign contribution that is reported on a Form 460 Campaign Statement, by itself, is not considered willful or knowing.

**13. Is there a legally required participation exception to recusal?**

Officers who would otherwise be disqualified from participating in a proceeding can participate if their vote is legally required. For example, a City Council action requires six votes under the Charter, and if disqualifying a member of the City Council would result in only five members able to vote, the member of the City Council may participate in the proceeding. Absence alone is not sufficient to trigger the rule of legally required participation.

**14. Is there an opportunity to cure the violation before the decision and lawfully participate?**

Yes – the officer may cure a violation 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. The officer’s controlled committee, or the officer if no controlled committee exists, shall maintain records of curing any violation.

**15. Is there a cure post-decision?**

If an officer unwilfully and unknowingly accepts, solicits, or directs a contribution of more than \$250 during the 12 months after the date of a final decision, the violation can be cured by returning the contribution, or the excess over \$250, within 14 days of accepting, soliciting, or directing the contribution, whichever comes latest. The officer’s controlled committee, or the officer if no controlled committee exists, shall maintain records of curing

any violation.

**16. What is the penalty for a violation of the Levine Act?**

Violation of the Levine Act carries with it administrative, civil, or criminal penalties and the FPPC is actively monitoring compliance by local officers with the Levine Act.

**17. Does a party have disclosure obligations?**

The party to a proceeding who contributed more than \$250 to an officer in the 12 months prior to the proceeding will also be required to disclose the amount of any contribution(s) on the date a party to a proceeding files an application or other request initiating the proceeding. 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 City regarding the proceeding following the contribution, whichever is earliest.

A party should fill out the City of Lincoln's SB 1439 Levine Act Disclosure Statement.

**18. Does a participant have disclosure obligations?**

Participants are not required to disclose but may voluntarily disclose using the City of Lincoln's SB 1439 Levine Act Disclosure Statement.

**19. What if the spouse to a party or participant makes a contribution but is not a party to a proceeding?**

A campaign contribution in an amount over \$250 from the spouse to a party or participant could trigger the fundraising ban, recusal and disclosure requirements if the spouse is acting as an agent of the party or participant or would separately qualify as a participant and has a financial interest in the decision.

**20. What if a company that employs the party or participant makes a contribution but is not the party to the proceeding?**

A campaign contribution in an amount over \$250 from a company that employs the party or participant could trigger the fundraising ban, recusal and disclosure requirements if the company is acting as an agent of the party or participant or would separately qualify as a participant with a financial interest.

**21. What if a family member of a party or participant makes a contribution but is not a party to the proceeding?**

A campaign contribution in an amount over \$250 from a child of a party or participant could trigger the fundraising ban, recusal and disclosure requirements if the child is acting as an agent of the party or participant, would separately qualify as a participant with a financial interest. A contribution made by a child under the age of 18 is presumed to be a contribution from his/her/their parent or guardian.