



Department: Administration
Cost Center: 1021
For Agenda of: 2/6/2024
Placement: Public Hearing
Estimated Time: 60 minutes

FROM: Greg Hermann, Deputy City Manager
Prepared By: Megan Wilbanks, Deputy City Clerk

SUBJECT: UPDATE ON SENATE BILL 1439, ADDITIONAL CAMPAIGN CONTRIBUTION DISCLOSURES, AND CONSIDER INTRODUCTION OF AN ORDINANCE TO AMEND MUNICIPAL CODE CHAPTER 2.40.040 (CAMPAIGN CONTRIBUTION LIMITATIONS)

RECOMMENDATION

1. Receive an update on Senate Bill 1439; and
2. Provide direction to staff to create disclosure forms to be included with planning applications and modify public comment cards with disclosure statements; and
3. Consider introduction of a draft Ordinance entitled, "An Ordinance of the City Council of the City of San Luis Obispo, California, amending Chapter 2.40.040 of the Municipal Code related to Campaign Contribution Limitations" reducing the per person contribution limit from \$300 to \$250.

POLICY CONTEXT

Municipal Code Chapter 2.40 outlines Elections Campaign Regulations and Section 2.40.040(A) establishes the current total contribution limit per person at \$300. Changes to the Municipal Code require two public hearings: 1) Introduction of a draft Ordinance (Attachment A) and 2) Second reading and adoption of the proposed Ordinance.

DISCUSSION

Background

Approved by the Governor in September 2022 and effective January 1, 2023, Senate Bill 1439 (SB 1439) broadens the scope of Section 84308 of the Political Reform Act to prohibit local elected officials 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. SB 1439 also extends the period in which an official is prohibited from receiving a contribution exceeding \$250 from a party or participant in the proceeding from three to 12 months after the final decision. The full text of SB 1439 is provided in Attachment B.

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The City of San Luis Obispo's Elections Campaign Regulations regarding campaign contributions were last reviewed and amended in 2014 ([Ordinance No. 1599, 2014 Series](#)). At that time, upon recommendation from the Election Regulations Review Committee, the Council *increased* the total per-person contribution limit from \$250 to \$300.

At the [July 18, 2023](#) Council Meeting, the Council decided not to appoint an Election Regulations Review Committee to review whether the maximum allowable contribution should be *lowered* to \$250 to align with SB 1439. Council provided direction ([see approved Minutes](#)) to return in the Winter of 2024 to further discuss the status and implementation of SB 1439 and consider a reduction of the maximum allowable contribution.

Since presenting to Council in July 2023, City Clerk and City Attorney staff have attended several trainings hosted by the League of California Cities and the Fair Political Practices Commission (FPPC) regarding the implementation of SB 1439 (Attachment C). The FPPC has developed and published resources on their "[Pay-to-Play Limitations and Prohibitions \(Section 84308\)](#)" web page, with key points of information summarized below:

- ***What types of proceedings are covered by Section 84308?***

Section 84308 pertains to proceeding[s] involving a license, permit, or other entitlement for use. The phrase "license, permit, or other entitlement for use," in turn, "means all business, trade, and land use licenses and permits and all other entitlements for use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

- ***Who does Section 84308 apply to?***

Officers¹ are prohibited from accepting, soliciting, or directing a contribution greater than \$250 from a party², participant³, or their agent⁴ while the entitlement for use proceeding is pending, and for 12 months *after* a final decision in the proceeding⁵. Similarly, local elected officials are 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.

¹ Section 84308 defines "**Officers**" as: Any elected or appointed officer of an agency, any alternate to an elected or appointed officer of an agency, and any candidate for elected office in an agency.

² Section 84308 defines "**Party**" as: Any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

³ Section 84308 defines "**Participant**" as: Any person who is not a party but who actively supports or opposes a particular decision in an entitlement for use proceeding and who has a financial interest in the decision.

⁴ Section 84308 defines "**Agent**" as: Any person that represents that party or participant for compensation and appears before or otherwise communicates with the governmental agency for the purpose of influencing the pending proceeding.

⁵ Historically, in San Luis Obispo, there have been no contributions solicited or received *after* the election.

- ***What contributions are covered by Section 84308?***

Contributions over \$250 that an officer accepts, solicits, or directs to:

- The officer's own campaign or controlled committee,
- OR, to another candidate's campaign or controlled committee.

Aggregation rules:

- Party/participant's contributions must be aggregated with contributions by an agent and not exceed \$250 in the previous 12 months or from the date the agent was hired as a paid employee, contractor, consultant (whichever is shorter), involving a license, permit, or other entitlement for use.

- ***How do I "cure" a violation of Section 84308?***

The Officer must return the contribution amount that exceeds \$250 within 30 days of the time the officer knows or should have known of both the contribution and the proceeding.

An officer may participate in the proceeding before returning a contribution if:

- The decision is made at the public hearing;
- The officer knew/should have known of the contribution and the proceeding for fewer than 30 days;
- The officer discloses the contribution, either orally or in writing, on the record and commits to returning the portion in excess of \$250 within 30 days.

Alternatively, an officer may choose to recuse from the proceeding and retain the contribution in full. The officer must disclose the fact they have received contributions from the party in question in excess of \$250 within the preceding 12 months and the name(s) of the contributor(s).

It is unlawful to accept, solicit, or direct a contribution from a party, participant, or agent for 12 months after the final decision. There is no option to cure if the officer knowingly and willingly accepts the contribution; if they unknowingly accept, the cure is to return the contribution within 14 days.

- ***Do SB 1439's amendments to Section 84308 apply to contributions received or proceedings participated in throughout 2022, before SB 1439 took effect?***

No. The Fair Political Practices Commission has determined a local elected official is not prohibited from taking part in entitlement for use proceedings based on contributions received in 2022, nor is an official prohibited from accepting, soliciting, or directing contributions exceeding \$250 from parties or participants in proceedings finalized in 2022.

- ***What are the potential consequences for violating Section 84308?***

As with most provisions of the Political Reform Act, a violation of Section 84308 may result in a civil action brought by the FPPC for an amount up to five thousand dollars (\$5,000) per violation.

Recommendations to Implement SB 1439

There are several best practices to implement SB 1439. These practices would assist Council in knowing when there is a project coming before them that is impacted by SB 1439 and also reduce the likelihood of contributions that violate SB 1439.

Due to the need to aggregate party/participant contributions with agent contributions for an individual license, permit, or other entitlement for use decision, staff recommends the creation of disclosure forms to be included with planning applications and the modification of public comment cards with disclosure statements as follows:

- For license, permit, or other entitlement for use:
 - Include a section in staff reports indicating whether the matter is subject to the SB 1439.
 - Add SB 1439 disclosure requirements on agendas and speaker cards.
 - Amend project application forms to include disclosure questions.
- For all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises:
 - Add language on bid documents to alert parties of the statute.

In addition, to reduce the likelihood of contributions that violate SB 1439, Council can consider the adoption of an Ordinance lowering the per-person contribution limit from \$300 to \$250 (Attachment A). This recommendation is optional; councilmembers would still be required to monitor contributions for aggregated totals exceeding \$250 and staff still recommend the disclosure forms and public comment modifications discussed above, but the amendment would align City contributions limits with SB 1439.

Previous Council Action

On [July 18, 2023](#), staff requested that the Council consider creating a committee to review Elections Campaign Regulations and whether the maximum allowable contribution should be lowered to \$250 to align with Senate Bill 1439. Council provided direction ([see approved Minutes](#)) to return in the Winter of 2024 to further discuss the status and implementation of Senate Bill 1439 and consider a reduction of the maximum allowable contribution.

Public Engagement

In accordance with the City's noticing requirements for proposing amendments to the Municipal Code, a legal ad will be published in The New Times 10 days prior to introduction of the ordinance and 5 days prior to final adoption, if applicable. Additionally, contents of the ad(s) will be published to the City's website, with e-notifications sent to subscribers of City News. The public will have an opportunity to provide public comment in writing prior to the meeting or as public comment during the meeting.

CONCURRENCE

The City Attorney's Office, Community Development Department, and Finance Department concur with staff's recommendation.

ENVIRONMENTAL REVIEW

The California Environmental Quality Act does not apply to the recommended action in this report, because the action does not constitute a “Project” under CEQA Guidelines Sec. 15378.

FISCAL IMPACT

Budgeted: Yes
 Funding Identified: N/A

Budget Year: 2023-24

Fiscal Analysis:

Funding Sources	Total Budget Available	Current Funding Request	Remaining Balance	Annual Ongoing Cost
General Fund	\$N/A	\$	\$	\$
State				
Federal				
Fees				
Other:				
Total	\$N/A	\$	\$	\$

There are no financial impacts directly associated with this item.

ALTERNATIVES

1. ***Direct staff only to introduce an Ordinance to amend Municipal Code Chapter 2.40.040 to lower the per-person campaign contribution limit to \$250.*** Staff does not recommend this alternative as simply lowering the contribution limit does not protect councilmembers from the aggregation requirement and adding additional disclosures into our processes is best practice for implementing SB 1439
2. ***Do not direct staff to lower the per-person campaign contribution limit to \$250 and do not update administrative processes to request SB 1439 disclosures.***

ATTACHMENTS

- A - Draft Ordinance amending SLOMC Chapter 2.40.040 (Contribution Limitations)
- B - Senate Bill 1439 Campaign Contributions
- C - FPPC Presentation on understanding the Levine Act, post SB 1439