

Real Estate Alert

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California Law Restricting Political Contributions to Local Elected Official Deemed Constitutional – At Least For Now

A Sacramento Superior Court judge has upheld SB 1439, a bill that requires local elected officials (e.g., city council members, county supervisors) who have received \$250 or more in the last 12 months from a party or participant in a proceeding to recuse themselves. SB 1439, enacted in September 2022, prohibits certain local officials from (1) receiving a contribution of more than \$250 from a party or their agent for 12 months after a proceeding, (2) receiving a contribution of more than \$250 from a participant or their agent for 12 months after a proceeding if the official knows or has reason to know that the participant has a financial interest, and (3) participating in a licensing/permitting decision if a party or a participant has contributed more than \$250 in the preceding 12 months. SB 1439 also requires a party to disclose on the record of the proceeding any contribution more than \$250 made by the party or the party's agent within the preceding 12 months.

The statute defines "party" to mean 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 has a financial interest in the decision. If a closed corporation is a party or a participant, the majority shareholder is subject to SB 1439's contribution prohibitions and disclosure obligations.

The Fair Political Practices Commission (FPPC) recently clarified that contributions made before Jan. 1, 2023, do not trigger the new limitations on contributions to local



elected officials. Therefore, a local elected official would not be prohibited, under this new law, from participating in a governmental procedure/decision if they received a contribution before Jan. 1. Similarly, a local elected official is not prohibited from receiving a contribution based on the elected official's participation in a license, permit or other entitlement-for-use proceeding so long as the official's participation occurred before Jan. 1, 2023.

SB 1439 may inadvertently increase contributions to independent expenditure committees. Nothing in the law restricts supporters from contributing to an independent expenditure committee (e.g., a super PAC) supporting their preferred candidate. For example, a supporter who usually contributes directly to Bob Smith's candidate committee can still contribute to an independent expenditure committee that supports Bob Smith for council without triggering the statute. Under such a scenario, the independent expenditure committee generally may not "coordinate" (e.g., strategize, discuss the campaign) with the candidate or their agents. All individuals and even corporations can contribute an unlimited amount to independent expenditure committees. All contributions to these committees will be disclosed.

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The constitutional challenge to the statute was brought by several business groups, including the California Building Industry Association, the California Business Roundtable and the California Retailers Association. The Superior Court's decision will likely be appealed. The FPPC will meet on June 15 to discuss and likely pass clarifying regulations. In the meantime, if you anticipate any potential appearances before a local government entity, we highly recommend contacting counsel before contributing to local officials in California.

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