CITY OF PALO ALTO

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Overview of the Levine Act

The Levine Act, codified under Government Section 84308, serves to deter "pay-to-play" practices by limiting campaign contributions from those involved in a proceeding involving a "license, permit, or other entitlement for use" before a public agency. Enacted in 1982, it initially applied only to appointed board and commission members. However, as of January 1, 2023, its reach was expanded to cover agencies with directly elected members including those elected to serve on a City Council. In 2024, the Legislature made additional amendments to the Levine Act which are effective January 1, 2025.

As of this writing, the Levine Act imposes two primary duties on elected officials.

- First, it prohibits accepting, soliciting, or directing a campaign contribution of more than $250 if the donor is involved in a proceeding involving a license, permit or other entitlement for use that is pending before the agency and for 12 months following the conclusion of the proceeding. This part of the Levine Act is often referred to as the "contribution limit."

Beginning January 1, 2025, the contribution limit and threshold for the conflict of interest provision will increase to $500.

- Second, it requires elected officials to recuse themselves from any proceeding involving a license, permit or other entitlement for use if the official has received a campaign contribution over $250 from a person involved in the proceeding within the previous 12 months. This part of the Levine Act is often referred to as the "conflict of interest provision."

Both requirements are a significant change as there was not a statewide contribution limit from certain campaign donors, and campaign contributions did not previously give rise to a conflict of interest under State law. To assist officials and candidates in complying with these new requirements, this memorandum is intended to provide an overview of the Levine Act.

1. What is a proceeding involving a "license, permit or entitlement for use"?

The Levine Act defines "license, permit, or other entitlement for use" to mean all business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts, and all franchises. While the term "entitlement for use" itself is not explicitly defined in the Levine Act, its context and objectives imply that it is intended to cover proceedings affecting specific, identifiable individuals or those with a significant financial impact on participants. Examples of such proceedings include:

- Building and development applications
- Conditional use permits
- Contracts, unless the contract is competitively bid (e.g., awarded to the lowest responsible bidder), labor, or personal employment contract.
- Public street abandonments
- Private development plans
- Rezoning of specific real estate parcels
- Event permits
- Rulemaking procedures affecting a particular industry where only a small number of businesses are affected
- Special district formation proceedings involving the creation of a special use or benefit to the persons in the district
- Tentative subdivision and parcel maps
- Zoning variances

Note: the Levine Act does not cover proceedings in which general policy decisions or rules are made or where the interests affected are many and diverse.

Beginning January 1, 2025, the Levine Act will not apply to:

- Competitively bid contracts that are required by law, agency policy, or agency rule to be awarded pursuant to a competitive process
- Labor contracts
- Personal employment contracts
- Contracts valued under $50,000
- Contracts where no party receives financial compensation
- Contracts between two or more public agencies
- The periodic review or renewal of competitively bid contracts unless there are material modifications or amendments proposed to the agreement that are valued at more than 10 percent of the value of the contract or fifty thousand dollars ($50,000), whichever is less.

For the City of Palo Alto, most land-use decisions and contracts that are not exempt will be subject to the Levine Act.

2. When is a proceeding “pending”?

A proceeding is considered "pending" if:

- The decision is currently before the City for consideration. This includes any item that has been placed on the agenda for discussion or decision at any public meeting of the City, including boards and commission meetings, or

- The elected official is aware, or has reason to believe, that the proceeding is under the jurisdiction of the City for a decision or other action, and it is reasonably foreseeable that the decision will be brought before them in their capacity as a decision-maker.

Beginning January 1, 2025, a meaning of what is “pending” will narrow. "Pending" will mean that the item has been placed on a public meeting agenda of the officer's body, or the officer "knows" that the proceeding is within the agency's jurisdiction (the phrase "or reason to know" was not carried over), and it is reasonably foreseeable that it will come before the officer in their decision-making capacity (which includes making recommendations to the Council).

Note: The definition of "pending" for parties, participants, and their agents differs. A proceeding is "pending" for a party, participant, and their agents when it is under the City's jurisdiction for action.

> Example: A resident applies to Urban Forestry for a tree removal permit. Typically, at this point, a Councilmember would not "know or have reason to know" about the proceeding and, therefore, it is not "pending" for before the Council under the Levine Act. Therefore, the Councilmember would not violate the Levine Act by accepting, soliciting, or directing a contribution of more than $250 from the resident at this point in the process. (This would not be the case if the resident or a neighbor informed the Councilmember of the permit application.)
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> Example: Using the previous example, Urban Forestry, and on appeal the Public Works Director, reject the permit application, and the resident appeals the decision. The resident's permit item appears on the agenda for an upcoming City Council meeting. At this point, the proceeding is "pending" and Councilmembers are now prohibited from accepting, soliciting, or directing a contribution of more than $250 from that resident.
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> Example: Alternatively, suppose that prior to the permit decision appearing on a meeting agenda, a neighbor and the applicant both told a Councilmember that the application was pending before Urban Forestry and would likely come before the City Council at some point if the application is rejected. Because the Councilmember has this information, the proceeding would be "pending" for them, even though the item had not yet been included on a City Council meeting agenda.

3. Who does the Levine Act apply to?

The Levine Act applies to all individuals classified as "officers" within an agency. An "officer" is any individual who, whether elected or appointed, has the power to make decisions, participate in decision-making, or influence decisions. Councilmembers fall under this definition and are subject to the Levine Act when fundraising for re-election to Council or for election to another local, state, or federal office. City board and commission members with decision-making authority, including making recommendations to the Council, are also "officers" subject to the Levine Act when fundraising for election to Council or for election to another local, state, or federal office.

A candidate for office who is not yet elected does not qualify as an "officer of the agency." Consequently, the restrictions in the Levine Act pertaining to an "officer of the agency" do not apply to such individuals until they become an officer under the Levine Act.

The Levine Act also does not apply to:

- Member of the courts or any agency in the judicial branch;
- Member of the State Legislature;
- Member of the Board of Equalization; or
- A Constitutional officer (i.e., the Governor, Lieutenant Governor, Attorney General, Controller, Insurance Commissioner, Secretary of State, State Treasurer, and Superintendent of Public Instruction).

4. What are Councilmember responsibilities?

4.1. *The Campaign Contribution Limit: $250 Contribution Limit During 12-Month Period While the Proceeding is Pending and 12 Months Thereafter*

For any entitlement for use proceeding, officers with decision-making authority may not accept, solicit, or direct campaign contributions exceeding $250 from any "party" involved in the proceeding or their agents, or from any "participant" or their agents who, to your knowledge or based on reasonable grounds, have a financial interest in the outcome of the proceeding. This prohibition applies while the proceeding is pending and extends for twelve months following the final decision.

Beginning January 1, 2025, agents of a party or participant are prohibited from contributing any amount while the proceeding is pending and until 12 months after the final decision. An agent is someone who represents that party or participant for compensation and appears before or otherwise communicates with an agency for the purpose of influencing the proceeding on behalf of a party or participant.

Example: A developer files an application with the City on January 1, 2023. The same day, the developer contributes $250 to a Councilmember's campaign committee for their election to Governor. The City's consideration of the application is still in process a year later when, on January 1, 2024, the developer contributes another $250 to the Councilmember's campaign committee. The developer does not violate the Levine Act by making the second contribution while the proceeding is pending and the Councilmember does not violate the Levine Act by accepting the second contribution because the contributions did not amount to more than $250 during any 12 month period.

Example: A landowner files an application with the City on January 1, 2023 to rezone their parcel. The same day, the landowner contributes $150 to the reelection campaign committee of a Councilmember. On July 1, 2023, the same landowner contributes another $100. The matter is pending before the City and the proceeding is still in process a year later when, on January 1, 2024, the landowner contributes another $250. The landowner and the Councilmember will violate the Levine Act by accepting the $250 contribution because the Councilmember received more than $250 during a 12-month period. The Councilmember received $100 from the party on July 1, 2023, and $250 on January 1,2024, for a total of $350 during a 12-month period.

4.2. *The Conflict of Interest Provision: When Campaign Contributor Involved, Levine Act may Require Disclosure, Recusal, or Return of Contributions*

Under the Levine Act, elected officials are prohibited from making, participating in making, or in any way attempting to use their official position to influence a decision in an entitlement for use proceeding pending before the agency if they have willfully or knowingly received a contribution in an amount of more than $250 within the preceding 12 months from a party or a party's agent, or from any participant or a participant's agent if they know or have reason to know that the participant has a financial interest in the decision.

This conflict-of-interest provision is triggered in situations where the elected official received the contribution as a candidate before election or re-election to office. It is also triggered where the contribution was received before the entitlement for use proceeding was pending.

4.2.1. *Disclosure*

If an elected official received a contribution exceeding $250 from a party, participant, or their agent within the past 12 months, they are required to disclose the contribution as follows:

- Form: Disclosure may be made orally or in writing during a public meeting.
- Timing: If a public meeting is held, the disclosure must occur at the meeting's start. If an official learns of the party's contribution or the participant's contribution and financial interest during the meeting, disclosure must be made at that time, before further participation in the proceeding.
- Contents: The disclosure must include:
    - The fact that the official received contributions from a party, participant, or their agent, greater than $250 within the last 12 months; and
    - The name(s) of the contributor(s).

4.2.2. *Recusal*

If an official has accepted a contribution exceeding $250 and is either unwilling or unable to return the contribution (see next section) within the required timeframe, the official must refrain from participating in the decision. As with other conflicts of interest, the official should disclose the conflict at the meeting before the item is heard, leave the room, and abstain from any participation in the decision. For an agenda item on the consent calendar (uncontested items), the official may remain in the room during the consideration of the consent calendar.

4.2.3. *Returning Contributions*

Under the Levine Act, Councilmembers are allowed to return a contribution that could otherwise prevent their participation in an entitlement for use proceeding, provided they do so within 30 days of becoming aware, or when they reasonably should have become aware, of both the contribution and the relevant proceeding. The return of such contributions is permissible under the following conditions:

- The contribution was made by a party before the Councilmember became aware, or had reason to be aware, that a proceeding involving the party was underway. Awareness is presumed if the proceeding has been announced on the Council agenda, or

- The contribution was received from a participant before the Councilmember knew, or should have known, that the participant had a financial interest in the proceeding.

Moreover, the Levine Act allows Councilmembers to still partake in the proceeding before returning the contribution, provided the following criteria are met:

- The decision occurs during a public meeting and the Councilmember was aware, or should have been aware, of the contribution and the proceeding for less than 30 days.

- Upon becoming aware of the contribution and before further participation in any discussion or decision-making, the Councilmember must disclose the nature of the disqualifying contribution publicly during the proceeding and promise that the return of the contribution will happen within the 30-day period from when the Councilmember first became aware, or should have become aware, of the contribution and the proceeding.

Beginning January 1, 2025, a Council Member may return a contribution within 30 days from the time the decision is made, or knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, whichever comes last.

- The contribution is indeed returned within this specified timeframe.

  Example: A well-known local developer with a pending application before the City contributes $250 to a candidate's campaign committee for election to the City Council. Neither the candidate nor the developer violate the Levine Act because the candidate is not yet elected to office.

  Example: Using the previous example, the candidate wins their election and assumes office. Three months into their term, the developer's application comes before the City Council for approval. The newly elected Councilmember will need to disclose the contribution and recuse themselves from the decision or return the contribution to the developer.

  Example: A Councilmember is running for reelection and accepted a $300 campaign contribution from a well-known developer, who at the time did not have a project pending with the City. The Councilmember is re-elected and after the election the developer applies with the Planning Department to build an apartment complex. Six months later, the proposal goes before the Council for final approval. The Councilmember did not violate the Levine Act when they received the contribution because the developer's application was not pending at the time the donation was made. However, the Councilmember will need to disclose the contribution and recuse themselves from the decision on the developer's project or return the contribution to the developer.

Example: You are a City Councilmember. A development project application is included on the agenda for the next City Council meeting. The applicant has failed to disclose the $300 contribution he made to your campaign committee eight months ago, in violation of Section 84308. (Where the contribution is made prior to the proceeding, the party must disclose the contribution at the time of filing the application.) The $300 contribution was included in a campaign report filed by your campaign committee. Accordingly, at the point the project application appears on the City Council meeting agenda, you have reason to know about the developer's $300 contribution—even though the applicant did not disclose it in their initial application—and you must either recuse yourself from the proceeding or return the amount exceeding the $250 contribution limit.

5. Who is a "party"?

The Levine Act defines a "party" as any individual or entity that applies for, or is the subject of, a proceeding related to obtaining a license, permit, or any other form of entitlement for use.

For example, under the Levine Act, a 'party' refers to entities such as developers with pending building applications before the Planning Department, or companies and individuals with contracts that are not competitively bid awaiting approval on the Council agenda.

6. Who is a "participant"?

The Levine Act defines a "participant" as any individual who, although not a party, actively supports or opposes a specific decision in an entitlement for use proceeding *and* has a financial interest in the outcome of that decision.

Active support or opposition to a decision includes engaging in communication with a Councilmember or City staff to influence the decision. This includes actions such as:

- Lobbying in person;
- Testifying in person; or
- Engaging in any form of communication with a Councilmember or City employee with the intent to influence the proceeding's outcome.

Note: This does not include communications made to the public outside of the proceeding, such as at a meeting of neighbors.

6.1. *What is a financial interest under the Levine Act?*

As with other conflict of interest laws in the Political Reform Act, the Levine Act defines a "financial interest" as the following:

- Business Entities: Employment, directorship, officer, partnership, trusteeship, management role, or an investment in a business entity valued at $2,000 or more.
- Real Property: Ownership of, or a stake in, real property valued at $2,000 or more within proximity (e.g., under 500 feet or 500-1000 feet) of the property that is the subject of the proceeding. This encompasses leasehold interests but excludes month-to-month tenancies.
- Sources of Income: Receipt of income amounting to $500 or more in the 12 months preceding the decision-making process.
- Gifts: Receipt of gifts totaling $590 or more in the 12 months leading up to the decision-making process.
- Personal Finances: The personal finances of the participant or those of the participant's immediate family members.

Note: "Financial interest" are only relevant in determining whether an individual qualifies as a participant under the Levine Act and is not a consideration when determining whether someone is a "party."

> Example: A resident sends a letter to the City Council regarding an application to redevelop a home in their neighborhood. Another resident makes a public comment at the Council Meeting regarding the proceeding. If either person has a financial interest, such as living within 500 feet of the property in the proceeding, that person qualifies as a participant.
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> Example: A resident writes an op-ed article, published in the local paper, in support of the City Council approving an application to build multi-family housing on an industrial site. Another person protests outside of City Hall before the Council considers the item, yelling and chanting that the City Council should vote no on the underlying project. As long as neither person communicates directly with a Councilmember or City staff regarding the proceeding, neither person is a participant even if they have a financial interest in the proceeding.

6.2. *When would a Councilmember know someone is a participant with a financial interest?*

Elected officials are deemed to "know or have reason to know" about a participant's financial interest in a decision if:

- The elected official has actual knowledge of the financial interest, or
- The participant discloses facts, either through written or oral statements during the proceedings, that clearly indicate their financial interest.

To assess whether a Councilmember should "know or have reason to know" about a participant's financial interest in a decision, as outlined in the Levine Act, consider whether you would have a conflict of interest if you had the same financial interest in the decision. When in doubt, please contact the City Attorney's Office for guidance.

> Example: A person comments at a City Council meeting, speaking in support of a developer's permit application. The resident specifies, "I work for the developer, but I'm not being paid to be here. I'm just here in my personal capacity because I think the project would benefit the community." Here, the participant has a business entity interest in the applicant as their employer, and a Councilmember would know that the proceeding would have a reasonably foreseeable, material financial effect on that business entity interest given the fact that the employer is the applicant in the proceeding.
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> Example: A resident comments at a City Council meeting opposing a development project because of the effect they believe the project will have on nearby residences and notes, "I live near this project." Based solely on these comments, you would not know or have reason to know whether the individual has a real property interest within 500 or 1,000 feet or further away from the project.
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> Example: If, however, the resident said, "I live within 100 feet," or "I live directly across the street" from the project, you would be aware that the individual lives within 500 feet of subject property and unless there are clear facts that the decision would have no measurable impact on her property, the requirements and prohibitions of the Levine Act will apply to this person as a participant.

7. Who is an agent?

A person is the "agent" of a party or participant in a pending entitlement for use proceeding if the person:

- 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.

Beginning January 1, 2025, agents of a party or participant are prohibited from contributing any amount while the proceeding is pending and until 12 months after the final decision.

Note: An individual is considered an agent under the Levine Act only if their communications with an agency aim to influence a pending proceeding. Conversely, individuals not seeking to influence the proceeding, even if compensated by a party or participant, do not qualify as agents.

Example: A local attorney is paid to represent a real estate developer in obtaining a real estate development agreement and drafts a letter in support of a project on behalf of the developer. The attorney sends the letter to the Planning and Transportation Commission ahead of its consideration of the application. Because the attorney is paid to represent the developer and has communicated with the City for the purpose of influencing the proceeding, the attorney is an agent for the developer under the Levine Act.

Example: Suppose the attorney's letter in support of the project is sent to the PTC by an assistant, rather than the attorney. Although the letter is intended to influence the proceeding, the assistant's purpose in sending the letter is not; rather, the assistant's purpose in sending the letter is administrative/secretarial. Likewise, the assistant is not paid to represent the developer; the assistant is paid to assist the attorney. For these reasons, the assistant is not an agent of the developer.

Example: Continuing with above examples, the Planning Commission considers the project application. The project architect attends the meeting and provides technical data and analysis in response to Planning Commission questions. If the architect does not otherwise engage in direct communications for the purpose of influencing the proceeding, the architect is not an agent for the developer.

Example: At a City Council meeting, a member of the public comments and states, "I work for the Chamber of Commerce and my job is to bring business to Downtown and help revitalize the Downtown area economy. Approval of this project would do just that." Based on the person's comments, you know it is reasonably foreseeable the proceeding would have material financial effect on the person's source of income—the Chamber of Commerce based on the nexus between the governmental decisions at issue and the Chamber of Commerce's goals that the speaker is paid to achieve. The Levine Act's requirements and prohibitions would apply to this participant.

8. When has an elected official "willfully or knowingly" received a $250 or greater contribution from a party, participant, or agent within the past 12 months?

8.1. *Knowledge*

A Councilmember will have "willfully or knowingly" received a contribution under any of the following conditions:

- Actual Knowledge: The Councilmember is directly aware of the contribution.
- Disclosed at Public Meeting: The contribution has been openly disclosed by the party or participant at a Council Meeting.
- Other Reasons to Know: The Councilmember has become aware of the contribution through various indicators, which may include:
  - Notification by the party, participant, or another individual that a contribution or contributions have been made to the Councilmember.

- The Councilmember has personally solicited the party or participant for a contribution.
- The Councilmember personally accepted a contribution from the party or participant.

Relevance of Prior Campaign Reporting: The inclusion of a contribution in a campaign report filed by a campaign committee does not, by itself, constitute a "reason to know" about a party's or participant's contribution.

8.2. *How is the $250 Calculated?*

To ascertain if an elected official has received a contribution of $250 or more from a party, participant, or their agent, consider the aggregation rules described below. Typically, aggregation applies when a contribution is received from a party or participant, as an individual, and from a business they own or control.

To determine if the cumulative contributions from a party, participant, or their agents exceed $250 within a 12-month timeframe, an elected official must aggregate:

- All contributions made directly by the party or participant.
- All contributions made by the agent of the party or participant within either: (A) the preceding 12-month period; or (B) from the date the agent was engaged as a paid employee, contractor, or consultant by the party or participant, whichever is shorter.
- Contributions from any individual (except for uncompensated officers of nonprofit organizations) or entity that, according to Section 82015.5 of the Political Reform Act, should be aggregated with those of the party, participant, or their agent.

- **Exceptions**: While contributions as described above generally need to be aggregated, there's an exception for unknowingly received contributions that should be aggregated. An elected official is not deemed to have "reason to know" about such a contribution—thus not breaching the Levine Act—if:

  - The contribution was not disclosed by the party, participant, or agent in the proceeding's record, and
  - You lack knowledge of facts that mandate aggregation of the contribution under Government Code section 82015.5 and Regulation 18438.5.

Section 82015.5 states that:

- Contributions by an entity under the direction or control of an individual must be combined with those made by that individual and any other entity under their control.
- Contributions from entities controlled by a majority of the same individuals should be aggregated, or
- Contributions by entities that a person majority owns are to be aggregated with those by the majority owner and all other similarly owned entities unless these entities operate independently in making campaign contributions.

Note: Generally, the contribution from a party or participant's spouse would not be combined with those of that party or participant. However, aggregation is required if:

- The proceeding involves real property or a business interest jointly owned by the spouses.
- The spouse acts as an agent for the party or participant spouse.

  Example: A proceeding is on the Council agenda for the next meeting. A Councilmember checks whether the party involved has contributed to any of their controlled committees within the past 12 months and sees that the party contributed $200 six months ago. No other contributions have been disclosed by the party or the party's agent. Accordingly, the Councilmember may take part in the proceeding at the public meeting because the contribution was less than $250.

  Example: After the meeting, a Councilmember learns that the party owns a company that also contributed $200 to their committee six months ago, for an aggregate total contribution of $400 within the past six months. Because the party and the party's agent did not disclose the contribution by the party's company and the Councilmember did not know facts establishing that the contribution by the party's company needed to be aggregated with the party's contribution—i.e., you did not know of the connection between the party and the company—your participation in the proceeding was not a violation of the Levine Act.

  Example: Using the above example, suppose that during the middle of the meeting the party discloses that their company contributed $200 to a Councilmember's committee six months ago. At that point, the Councilmember would know facts establishing that the contributions need to be aggregated and would amount to more than $250 within the past 12 months. The Councilmember's continued participation in the proceeding would violate the Levine Act, unless the Councilmember disclosed on the record the excess contribution and pledge to return the disqualifying portion of the contribution within 30 days and subsequently did return the disqualifying portion of the contribution.

9. Compliance Tools and Where to Go for More Information

The Levine Act introduces complex provisions that have not previously been applied to local elected officials. As with other conflict of interest laws, the burden of compliance falls on the elected official and those considered parties and participants under the Levine Act. To assist with compliance, staff has added the following disclaimer to the Council agenda to inform the public of the law:

Levine Act Disclaimer

> **California Government Code §84308**, commonly referred to as the "Levine Act," prohibits an elected official of a local government agency from participating in a proceeding involving a license, permit, or other entitlement for use if the official received a campaign contribution exceeding $250 from a party or participant, including their agents, to the proceeding within the last 12 months. A "license, permit, or other entitlement for use" includes most land use and planning approvals and the approval of contracts that are not subject to lowest responsible bid procedures. A "party" is a person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use. A "participant" is a person 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. The Levine Act incorporates the definition of "financial interest" in the Political Reform Act, which encompasses interests in business entities, real property, sources of income, sources of gifts, and personal finances that may be affected by the Council's actions. If you qualify as a "party" or "participant" to a proceeding, and you have made a campaign contribution to a Councilmember exceeding $250 made within the last 12 months, you must disclose the campaign contribution before making your comments.

The City Attorney's Office is available to assist with questions regarding conflicts of interest related to matters presented to the Council. While we can offer guidance on conflicts of interest, our office does not provide advice on campaign finance and cannot represent officials in their individual capacity. The City Attorney's Office can refer City officials to additional resources where needed.

For matters pertaining to campaign finance, including compliance with contribution limits, the Fair Political Practices Commission (FPPC) serves as the authoritative body. The FPPC provides resources at "https://www.fppc.ca.gov/learn/pay-to-play-limits-and-prohibitions.html." These resources will likely be updated to reflect the changes in the law once they go into effect on January 1, 2025. You can also contact the FPPC for assistance at 1-866-ASK-FPPC (1-866-275-3772) or via email at advice@fppc.ca.gov.