City of Long Beach **Memorandum**
Working Together to Serve

Office of the City Attorney

DATE: December 20, 2022

TO: Mayor and Members of the City Council

FROM: Taylor Anderson, Deputy City Attorney

SUBJECT: Senate Bill 1439 – Campaign Contributions to City Elected and Appointed Officers

This memorandum is to notify you of significant changes made to a portion of the California Political Reform Act of 1974 ("Political Reform Act"), known as the "Levine Act" ("Act), by Senate Bill 1439 ("SB 1439") that require local elected officers to recuse themselves from certain proceedings involving persons that made contributions to their political campaigns or officeholder accounts, subject to certain exceptions. Previously, the Levine Act only applied to local governing boards composed of appointed officers who hear proceedings involving licenses, permits, and other entitlements for use. Changes to the Act include the extension of the prohibitions and other provisions to elected officials as well as changes in the duration of the provisions of the Act.

I. Overview and Key Terms

The Act generally prohibits contributions of more than $250 made to an officer of an agency by a party, participant, or the party or participant's agent (collectively "their representatives") in a proceeding pending before the City involving a license, permit, or other entitlement for use, subject to certain to exceptions discussed below. This prohibition starts 12 months prior to certain proceedings and continues while proceedings are pending until 12 months following the date a final decision is rendered in the proceeding. The prohibitions in SB 1439 apply to any contribution made after January 1, 2023.

These requirements in the Act apply regardless of whether an officer accepts, solicits, or directs the contribution on the officer's own behalf, on behalf of any other elected or appointed officer or alternate, or on behalf of any candidate for office on or behalf of any committee. Therefore, these requirements apply to contributions made to political accounts or officeholder accounts and may apply to behests depending on the circumstances.

As discussed in more detail in the sections below, the Act imposes requirements for officers to disclose applicable contributions and recuse themselves. However, the Act also provides an opportunity to cure violations for contributions made after a final decision in a proceeding.

Officers. An "officer" is defined by the Act 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. City officers required to comply with the Act include, but are not limited to, City Councilmembers, candidates for the City Council, and certain City Commissioners.

The requirements discussed in this memorandum apply to those Commissions that conduct proceedings involving contracts, licenses, permits, and other entitlements for use which includes, but is not limited to, the Harbor Commission, the Water Commission; the Planning Commission; the Parks and Recreation Commission; the Board of Examiners, Appeals, and Condemnation; and the Cultural Heritage Commission.

However, since Commissioners are not elected and do not have officeholder accounts or political campaign accounts to receive contributions, the provisions of the Act do not apply until a Commissioner becomes a candidate for local, state, or federal office. Therefore, if a Commissioner is not running for office and a Commissioner does not currently hold office, and does not receive, solicit or direct any contributions, the restrictions of the Act would not be triggered.

Parties and Participants. A party, participant, or the party or participant's agent under the Act includes the parties directly involved in the proceeding (*e.g.*, an applicant or lobbyist of an applicant for a business license, conditional use permit, park permit, certificates or appropriates, etc.; the proposed recipient of a sole source contract), any other participants who actively support or oppose a particular decision in the proceeding including, but not limited to, any person that lobbies officers or employees; testifies before the City Council or applicable Commission; or otherwise acts to influence an officer.

Proceedings. The Act applies to proceedings involving the following:

- All business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use; and
- All contracts (other than competitively bid, labor, or personal employment contracts); and
- All franchises.

The Act does not apply to proceedings involving labor contracts, personal employment contracts or contracts that are competitively bid.

II. Timing Considerations and Requirements to Disclose, Recuse, and Return Contributions.

This section discusses the requirements to disclose, recuse, and return contributions made prior to the commencement of a proceeding and after a decision is made in a proceeding.

Contributions Made Prior to the Start of a Proceeding. If a contribution of more than $250 is made by a party, participant, or their representatives of a proceeding to an officer within 12 months before a proceeding, the officer who received the contribution must disclose that fact on the record of the proceeding. The officer is then required to

recuse themselves from the proceeding if the officer knows, or has reason to know, the party or participant that made a contribution of more than $250 has a financial interest in the decision of the proceeding. Officers are prohibited from making or in any way attempting to use the officer's official position to influence the decision of a proceeding.

If an officer returns the contribution of more than $250 (or the portion that exceeds $250) within 30 days from the time the officer knows, or should have known, about the contribution and the relevant proceeding, the officer may participate in the decision. For example, if a contribution is made in March, but a proceeding is not noticed to come before the officer until December of the same year, the officer would have an opportunity to cure and return the contribution when they learn (or should know) of the December proceeding.

Contributions Made During and After A Decision in a Proceeding. Officers are prohibited from accepting, soliciting, or directing a contribution of more than $250 from a party, participant, or their representatives of a proceeding during a proceeding and for 12 months following the date a final decision is rendered. It is also unlawful for a party, participant, or any of their representatives in a proceeding to make a contribution of more than $250 to an officer during a proceeding and for 12 months following the date a final decision is rendered by the City in the proceeding.

If an officer accepts, solicits, or directs a contribution of more than $250 during the 12 months after the date a final decision is rendered in the proceeding, the officer may cure the violation by returning the contribution (or the portion that exceeds $250), within 14 days of accepting, soliciting or directing the contribution, whichever comes latest. This opportunity to cure is only available if the officer did not knowingly and willfully accept, solicit or direct the prohibited contribution and the officer or officer's controlled committee keeps a record of curing the violation.

III. Violations of the Political Reform Act.

Violations of the Political Reform Act, including the provisions of the Levine Act, are punishable as a misdemeanor. In addition to other penalties provided by law, a fine of up to the greater of ten thousand dollars ($10,000) or three times the amount the person improperly or unlawfully contributed, expended, gave or received may be imposed upon conviction for each violation.

Please do not hesitate to reach out to our office if you have any questions.

TMA:kd
A22-03273
01448610.DOCX

cc: TOM MODICA, CITY MANAGER
LINDA F. TATUM, ASSISTANT CITY MANAGER
LAURA DOUD, CITY AUDITOR
DOUG HAUBERT, CITY PROSECUTOR
MONIQUE DE LA GARZA, CITY CLERK