On September 29, 2022, Senate Bill 1439 (Glazer) was signed by the Governor to take effect January 1, 2023. The bill broadens the scope of Section 84308 of the Political Reform Act by prohibiting 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. Additionally, the bill extends the period in which an official is prohibited from soliciting or receiving a contribution exceeding $250 from a party in the proceeding from three months to twelve months following the issuance of a final decision.

Section 84308 of the Political Reform Act was adopted in 1983 in response to Costal Commissioners receiving large donations from parties whose permits and entitlements were pending approval. At the time the statute was adopted, it stipulated that an officer of an agency may not accept or solicit a contribution more than $250 from any party or agent while a proceeding involving a license, permit, or other entitlement for use is pending before the agency and for three months following the date a final decision is rendered in the proceeding.

Additionally, the statute instructed that the official may not partake in such a decision if they have received a contribution exceeding $250 in the preceding twelve months. For the first time in the 40 years since the adoption of this section, the application of this section has been extended to include local elected officials.

Following the state legislature’s adoption of SB 1439, several concerned parties and agencies requested that the Fair Political Practices Commission (FPPC) issue an opinion on the retroactive effect of the statute, specifically, whether contributions made or received in 2022 prior to the bill’s effective date would result in the disqualification of local elected officials from proceedings taking place in 2023.

At the November 17 meeting, Commissioners opined that both staff and the public had valid and well-crafted arguments, noting that while the staff opinion succinctly highlighted the
importance of a prompt response to the so-called, “pay to play” political scheme, the commissioners found commenters’ argument showing that when faced with this precise issue regarding retroactivity in 1983, the commission at that time determined that Section 84308 would not apply retroactively to be more persuasive. Commissioners stated that they had not heard a persuasive argument on why the commission should change its stance now, especially given that the legislature was likely aware of the commission’s prior stance when enacting SB 1439.

Ultimately the commission voted that SB 1439 would not apply retroactively and would begin to apply only to contributions made or received following the bill’s enactment on January 1, 2023. An opinion to this effect will be drafted by FPPC staff and will be voted on by the commissioners at a special tele-meeting on December 22, 2022.

There continue to be additional issues with the implementation of SB 1439 including what constitutes a participant and at what point in a proceeding the 30-day “cure” provision takes effect as immediate examples. These issues and others will likely be addressed by the FPPC in the near future with additional regulations clarifying the effects of SB 1439. Information on new and recent FPPC regulations can be found on the FPPC website.

Notwithstanding the need to resolve these additional issues, it should be understood that this law represents a profound change in how applicants and their project teams can engage in local politics going forward.

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