



June 5, 2023

Chair Richard C. Miadich  
Commissioner Catherine Baker  
Commissioner E. Dotson Wilson  
Commissioner Abby Wood  
Fair Political Practices Commission  
1102 Q Street, Suite 3000  
Sacramento, CA 95811

Sent Via Email: [CommAsst@fppc.ca.gov](mailto:CommAsst@fppc.ca.gov)

**RE: Comment letter on Proposed Repeal, Adoption, and Amendment of Levine Act Regulations (18438-18438.8, 18705)**

Dear Chair Miadich and Commissioners Baker, Wilson, and Wood:

I write on behalf of the City of San Diego to provide comment and context as you consider implementing regulations pursuant to the passage of SB 1439 (Glazer). As San Diego is the second largest City in the state, the intent of this letter is to provide scenarios which may be unique to larger cities, that may face a much larger number of potential qualifying proceedings. There are also aspects of the governing structure of large cities, like San Diego, that the Commission should consider that could help create a clearer process and regulations. SB 1439 went into effect on January 1, 2023 and as the Fair Political Practices Commission works to promulgate implementing regulations for this extremely complex law, the City of San Diego will continue to develop the necessary policies locally to assist our local officers and regulated community to comply.

**18438.2. Proceedings Under Government Code Section 84308**

We write in support of Option 1, under proposed implementing regulation 18438.2. While we appreciate the development of an Option 3 to recognize the difference in knowledge available to an officer versus that of a party or participant, we find it necessary to highlight the fact that in many cases it is not known if a proceeding will go before officers at time of application. The City of San Diego manages its discretionary permits at various levels and for several more significant actions, discretionary approvals may be required and may appear before higher discretionary bodies such as hearing officials, the Planning Commission, or the City Council upon appeal. In certain instances for example, a protracted land use item may be required to go to the Planning Commission, but only advance to the City Council if it is appealed. In such a case under Option 3,

the party and participants, and their agents, would be regulated by the provisions of SB 1439 even though the item may never actually go before the officers.

For these reasons, we believe Option 1 provides a brighter line than Option 3 for compliance in line with the spirit of the law as it sets a standard that a proceeding shall be deemed to be “pending” when it is actually established that an item will go before an officer.

### **Regulation 18705. Legally Required Participation**

The City of San Diego has officers to which SB 1439 applies that do not sit on the governing body of their agency, specifically an independently elected City Attorney and Mayor. Voters in the City of San Diego approved Proposition D locally on June 8, 2010, which amended the City Charter to make permanent a Strong Mayor form of government, where the Mayor no longer sits as a member of the City Council and is vested with certain specified nondelegable duties. One such duty is upon action by the City Council, most ordinances and resolutions go to the Mayor for action and the Mayor may either sign or veto the action. If the Mayor takes no action within 10 days, ordinances and resolutions are deemed approved. The Mayor cannot delegate this authority to any other officer and these regulations are outlined in the Charter of the City, which requires a local vote of the people to amend.

As the Mayor has no alternative but to influence a proceeding, either through action or no action, it appears that they would be considered to qualify for legally required participation. The City brings this issue to your attention so that the Commission can make this clear in Regulation 18705 for officers that have nondelegable duties and an imposed requirement to participate.

Additionally, we request the Commission consider if the prohibitions captured in the proposed Section 18438.6. Solicitation, Direction, and Receipt of Contributions Under Government Code 3 Section 84308, apply in such a case. Unlike officers on governing bodies which can elect not to participate and other officers or alternates can take action in their place, in the scenario shared above, the officer has no alternative but to participate.

### **Conclusion**

We thank the Commission and your staff for the thoughtful process in providing necessary guidance to agencies regulated by SB 1439, and we appreciate the opportunity to comment on the proposed regulations. We believe consideration of the issues contained in this letter will assist officials in large cities to better comply with the new law and provide more regulatory certainty to benefit the public. Please contact me at [ADGranda@sandiego.gov](mailto:ADGranda@sandiego.gov) with any questions related to this letter.

Sincerely,

Adrian Granda  
Director, Department of Government Affairs  
City of San Diego