



Office of the Los Angeles City Attorney  
Hydee Feldstein Soto

REPORT NO. R24-0605  
December 4, 2024

**REPORT RE:**

**RECOMMENDATIONS FOR ESTABLISHING A PERMANENT  
OFFICE OF COMPLIANCE**

The Honorable City Council  
of the City of Los Angeles  
Room 395, City Hall  
200 North Spring Street  
Los Angeles, California 90012

Honorable Members:

On December 8, 2023, the City Council passed a motion (Council File 23-1097) requesting the City Attorney's Office, in consultation with the Executive Director of the Ethics Commission, the City Administrative Office, and the Chief Legislative Analyst, to report with recommendations for establishing a permanent Office of Compliance ("Compliance Office" or "Office") to proactively assist Councilmembers with identifying and avoiding potential conflicts of interest by reviewing upcoming City Council and City Council Committee agendas and Councilmembers' financial disclosures and other relevant information.

To facilitate Council's consideration of whether to create a Compliance Office and, if so, the scope of services it should offer, this report: (1) summarizes the applicable conflict of interest laws whose potential violations the Office could seek to identify; (2) briefly describes how the Office would conduct the required screening; (3) describes other jurisdictions' proactive screening for potential conflicts; (4) recommends where the Office should be established and whether any legal changes would be required to create the Office; and (5) estimates the required personnel and costs needed to create such an Office.

One point should be kept in mind: While an Office of Compliance can aid Councilmembers in identifying conflicts requiring recusal, and while a Member's reasonable reliance on information and guidance from a robust Compliance Office might mitigate a failure to recuse, each Member has a personal duty to recuse as required by law. The duty is not legally delegable, including to an Office of Compliance.

### **1. Applicable Conflicts of Interest Laws**

Councilmembers are subject to several conflicts of interest laws including the state Political Reform Act, Government Code Section 1090, common law conflicts of interests, and, in some cases, federal restrictions.

#### The Political Reform Act

The Political Reform Act (codified at Government Code sections 81000-91014) requires Councilmembers to recuse on matters that may affect their direct or indirect financial interests. These interests include income, business positions, investments, real property, and personal finances of either the Member or the Member's spouse or registered domestic partner (hereafter, simply "spouse"). For example, a member must recuse if the member has a real property interest located within 500 feet of the real property at issue in a development and may, depending on the circumstances, need to recuse even at a further distance.

Critically, recently passed Senate Bill 1439 (also known as the Levine Act) adds campaign contributions as potential bases for a Councilmember's mandatory recusal. As amended by SB 1439, Government Code Section 84308 now requires a Councilmember (among others) to recuse on matters involving licenses, permits, and other entitlements—including most contracts—where either a party (for example, a would-be licensee or contractee) or a "participant," or their agents, have contributed more than \$250 to the Member in the prior twelve months. A participant is, roughly, any person or entity who is not a party but who actively supports or opposes a particular decision on an entitlement proceeding and who has a financial interest in the decision. A Member may sometimes avoid recusal by returning a participant's conflict-creating contribution.

The Fair Political Practices Commission (FPPC) has adopted detailed regulations to determine whether recusal on a particular matter is required. (See 2 Cal. Code Regs. sections 18110-18998.) Further regulations from the FPPC are expected later this year.

#### Government Code Section 1090

Government Code Section 1090 prohibits a Councilmember (among others) from participating in making government contracts in which the Member or Member's spouse has a financial interest. Examples of the sources of such interests can include serving

on the board of a nonprofit organization, being a tenant of an entity that will receive a contract, benefiting the spouse's employer, and being in a related debtor/creditor relationship. Unless an exception applies, the Member and the City Council itself may be barred from entering into the conflicted contract. Where an exception applies, a Member may still need to recuse and disclose the Member's financial interest.

### Common Law Conflicts of Interest

The Common Law Doctrine of Conflicts of Interest sometimes also requires recusal when a Member has a personal interest in the outcome of a decision. The personal interest need not be financial. For example, a Member may need to recuse based on a personal relationship with an applicant that impairs the Member's objectivity. As its name suggests, Common Law Conflicts flow from principles articulated in court opinions.

### Federal Restrictions

Items before Council involving federal funds may trigger additional potential conflicts of interest. As one example, approval of use of Community Benefit Block Grants (CDBG) to an entity in which the member or spouse have a financial tie can require recusal or potentially bar the use of the funds, absent approval of HUD, based on the CDBG conflict rules.

## **2. Screening Procedures for Conflicts**

Most of the Office of Compliance's time and resources will need to be expended on compliance under SB 1439. The Office of Compliance can also review each Member's Statement of Economic Interests for conflicts under Section 1090 and other laws. The Council should determine the Office's scope of compliance review.

### **A. Screening Under SB 1439**

Evaluating Councilmembers' potential conflicts under SB 1439 will require the Office to research the parties listed in an item's agenda-language; research the parties in linked departmental reports; review additional information contained in the Council file; and sometimes confer with departments to ascertain the applicability of SB 1439 to specific matters, as well to further identify the parties, participants, and their agents. The Office will also need to research and review Secretary of State records to identify related entities of parties and participants.

Because many of the items necessitating recusal come to Council via departmental reports, the Office in many cases will be able to review prospective items before they are agendized. Council leadership and the Office, in conjunction with the CLA and City Attorney, could develop protocols for reviewing Rule 16 motions and other

non-departmentally generated items before they are agendaized. Protocols could also call for not agendaizing certain sorts of items if the information required for a thorough screening is not received in time.

The Office also should review Councilmembers' reported campaign contributions and correlate those with identified parties, participants, and their agents. Because reported contributions will not allow the Office to identify conflicts based on *unreported* contributions or a Councilmember's actual knowledge of solicitations, which also require recusal or cure under SB 1439, the Office will need to confer regularly with Members or Members must monitor for these sources of conflicts themselves. Alternatively, the Council could decide the Office's scope will not include reviewing contributions but, instead, ends with providing party/participant information to Councilmembers who then correlate that information with their contributions and solicitations to identify conflicted items requiring recusal.

Additionally, to comply with current law, the Office and/or the Councilmember and the Councilmember's staff will need to monitor Council and Committee meetings for new disclosures of contributions by parties and participants to determine whether the Councilmember can participate in the matter then pending, or whether additional research is necessary. This real-time monitoring will be demanding.

#### **B. Screening Under Section 1090 and Other Conflict Laws**

The Council will need to determine whether the Office's scope will also include review for conflicts based on laws other than SB 1439. The scope of review necessary to identify conflicts arising from Section 1090 and other laws depends on the interests of the specific Councilmember and the member's immediate family. A cursory agenda-review can identify items where conflicts are apparent from the interests stated on the agenda and disclosed on a Statement of Economic Interests. Many other matters require a review of the applicable Council file, some demanding a deeper understanding of the official's interests to recognize how the agenda item indirectly affects those interests. This can be particularly difficult when the Council addresses policy matters impacting interests whose disclosure is not on a Statement of Economic Interests. For instance, a residence is not reported on a Statement of Economic Interests unless used for business purposes. But if an official owns a residence in a community plan area, a Member may need to recuse on community plan decisions unless an exception applies. Also, while a spouse's separate income need not be disclosed on a statement of economic interests, those interests represent potential conflicts under Section 1090 regarding contracts regardless of a separate property agreement.

Additionally, a Statement of Economic Interests only identifies interests within a period of time, and would not include any interests that were obtained following the filing of a financial disclosure form. Either the elected official must timely disclose that

information to the Office, or the Member will need to individually monitor those matters and seek advice as appropriate.

Finally, identification of an agenda item and the interest potentially impacted will often require additional staff time, including from the City Attorney's office, to research, analyze and advise whether recusal is actually required on a matter. This process sometimes requires significant time. In some cases, not only must a Councilmember recuse on a proposed contract matter, but the entire Council may be barred from entering into the contract.

### **C. Tools to Facilitate a Review for Conflict of Interest**

To facilitate acquisition of the information needed to identify the persons and entities that might trigger recusals under SB 1439, the Office of Compliance will need to work with departments to include on requests for proposals (RFPs), grants, permits, and license applications required disclosures about applicants and related entities, and their agents, and contributions they have made to Members or candidates. The Ethics Commission and the State also have public databases of reported contributions and Restricted Developers, which can facilitate the fact finding process. Contingent on funding, the Office will also work with the Information Technology Agency (ITA) to develop or purchase a Citywide database to track this information. (Some of the collected information will likely be confidential and not subject to disclosure under the California Public Records Act, at least during most of the RFP process.) The Office will also work with departments to ensure that their reports to Council contain standard information indicating whether the matter is subject to SB 1439 and, if so, the parties and known participants.

Departmental reports and the envisioned database could also include additional standardized information such as project reference, date of application, decision type, recommending department, department contact, date of department decision, name of decision-making body, date of decision, contribution amounts and dates, and known contributions from parties, participants, and related entities.

Finally, the Office will work with departments and the Clerk's office to add language to agendas to notify parties of their obligation to disclose campaign contributions.

### **3. Other jurisdictions screening for potential conflicts**

Legislative bodies in several other jurisdictions in California have staff dedicated to screening for conflicts. These bodies meet less frequently and address far fewer items in a month than does the Los Angeles City Council, however. For all of these jurisdictions, staff who screen for conflicts receive a list of proposed agendas well in advance of when agendas are posted. In some instances, items will not be agendized if

the information required is not received in time to permit a screening.

- The Board of Directors of the Los Angeles County Metropolitan Transportation Authority (Metro) currently has one person to review items for conflicts. The fourteen-member Board meets once every three weeks. Most of the Board's items are contracts subject to SB 1439. Metro also has seven committees with five or six members that meet monthly.
- The South Coast Air Quality Management District (South Coast AQMD) has its ethics attorney and support staff review Board and Committee agendas to identify conflicts. The South Coast AQMD meets once monthly and has 10 committees, which also meet once per month, with an average of five members per committee. Most of South Coast AQMD's conflicts arise on contract matters. AQMD also utilizes a contractor disclosure form.
- San Francisco and San Diego do not currently have a prospective agenda review process. However, San Diego County has created a public database that identifies matters and parties and individuals who have disclosed a contribution.
- Santa Clara County recently launched a similar disclosure database for use by officials to help identify conflicts of interests. Santa Clara County has also created a public portal of SB 1439 filings.

#### **4. Location of and Staffing an Office of Compliance**

An Office of Compliance will most naturally fit with the work of the office of the City Clerk, drawing as appropriate on the expertise of the Ethics Commission and the City Attorney's Office and, sometimes for factfinding purposes, on information within the office of the Chief Legislative Analyst. The Clerk's office has the best understanding of when items are most likely to appear on Council and Committee agenda, and thus the required timing of SB1439- and other compliance-reviews for each item. The Office of Compliance will identify the potential interests but will not provide legal advice to Councilmembers, which will remain the City Attorney's responsibility. The City Attorney's Office will advise the Office of Compliance to assist it with the proper evaluation of disclosure requirements. No change in law will be necessary to create a Compliance Office within the Clerk's office. New ordinances will be required to change the Administrative Code if Council chooses to create a stand-alone Compliance Office outside of an existing department or office with the functions outlined above.

The scope of the Compliance Office's review will determine the necessary time and resources the Office will require. While both Metro and South Coast AQMD, for example, have one staff member conducting proactive reviews, they have far fewer meetings and the subject matters are narrower and often simpler to analyze. The City

Council has on average 12 Council meetings each month with an average of approximately 30-items per agenda. This results in approximately 360 monthly agenda-item checks. Of these, approximately 75 items will need complete review for SB 1439 purposes. With 15 members, this results in approximately 1,125 complete SB 1439 monthly reviews. Each review can take 4 to 6 hours, sometimes longer. (Committee items are not included in this calculation because these items appear on Council agendas and, therefore, should not be double-counted. Committees will, of course, affect the timing of the Office's reviews, since each item's parties and participants and their agents will need to be identified prior to the Committee.) Further, unlike the other jurisdictions discussed above, including Metro and South Coast AQMD, the main source of potential conflicts on City Council agendas are planning matters, which are usually more time-consuming to analyze than contracts.

Even if reviews are limited to SB 1439, then, extrapolating from the staffing of legislative bodies in other jurisdictions, and given the broader scope and scale of matters pending in City Council, the Office of Compliance will certainly require dedicated staff members to provide the same level of services. The Clerk believes the following dedicated staff will be required in the Clerk's office:

- One (1) Senior Management Analyst - to supervise the staff and oversee the program.
- Ten (10) Management Analysts - to perform analysis of the agenda items; with the large number of items that need review and the possibility of waivers and special agendas, enough staff is needed to provide thorough analysis within a short timeframe.
- Two (2) Senior Administrative Clerks - to provide clerical support for the one Senior Management Analyst and ten Management Analysts.

If the scope of review also includes Section 1090 and other conflict of interest laws, the number of necessary dedicated Clerk staff will likely need to increase by approximately fifty-percent. An additional Deputy City Attorney III plus a clerk or coordinator in the City Attorney's Office will also be necessary to assist in providing increased conflicts and ethics advice.

As an alternative, each Council office could have one staff member dedicated solely to reviewing for SB 1439 and other potential conflicts.

If you have any questions regarding this matter, please contact the undersigned at (213) 978-8100. A member of this Office will be available when you consider this matter to answer questions you may have.

Sincerely,

HYDEE FELDSTEIN SOTO, City Attorney

By



STREFAN FAUBLE  
Assistant City Attorney

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