LOCAL CITY AND COUNTY CONTRIBUTION RULES (AB 571)

This chapter contains information on contribution rules for candidates and officeholders seeking a city or county elective office in a city or county that has not already enacted a contribution limit pursuant to AB 571. (Please see Stats. 2019, Ch. 556 AB 571 Mullin). Along with the new campaign contribution limit, there are also other related provisions that formerly applied only to state level candidates that now apply to city and county candidates. Please note that none of the provisions of AB 571 discussed in this chapter apply to candidates in cities or counties for which the city or county has enacted contribution limits. You can search the FPPC's website to see if the city or county has enacted a contribution limit.

This chapter reviews:

- Contribution Limits
- Transfers
- Post-Election Fundraising
- Officeholder Committees
- Legal Defense Committees
- Recall Committees

For information about ballot measure committees controlled by a local candidate or officeholder, see FPPC Campaign Disclosure Manual 3.

A. City and County Candidate Contribution Limits (AB 571)

A candidate seeking election to a city or county office in a city or county that has not already enacted a contribution limit is subject to contribution limits from a single source per election. For purposes of contribution limits, the primary, general, special, and special runoff elections are separate elections. The chart below shows the limits per contributor for the type of office sought. Contribution limits may increase or decrease every two years based on changes in the Consumer Price Index. Regulations that set forth the amounts are adopted by the Commission.

Per Election Limits on Contributions to City and County Candidates

(For Elections Occurring from January 1, 2023 – December 31, 2024)

The chart below shows the campaign contribution limits per contributor, per election, for city and county candidates in cities and counites that have not enacted campaign contribution limits.

2023-2024 Contribution Limits for City and County Candidates in Cities and Counties That Have Not Enacted Limits			
Person (individual, business entity, committee/PAC)	Small Contributor Committee	Political Party	
\$5,500	\$5,500	\$5,500	

Timing

There are no restrictions on when a candidate may begin to fundraise for a city or county office, and contributions for a general or special election may be raised during or prior to a primary or special primary election for the same office. However, a candidate must file a Form 501 (Candidate Intention Statement) prior to soliciting or receiving contributions or making expenditures from personal funds. (Please see Chapter 2 for more information). A city or county candidate in a city or county that has not enacted a campaign contribution limit who is defeated in the primary or special primary election, or who withdraws from the general or special general election, must return contributions received for the general or special general election to the contributors. The contributions are returned on a pro rata basis, less the cost of raising or administering the funds and expenses attributable to the general election paid prior to the primary election (e.g., media purchases).

Loans

For city and county candidates in a city or county that has not enacted a campaign contribution limit, loans from third parties are contributions subject to limits. However, if a loan has been repaid, the lender, guarantor, endorser, or cosigner may make additional contributions to the same committee up to the limit. Please see Candidate Personal Funds below for more information on candidate loans to their own committee.

Candidate's Personal Funds

Contribution limits do not apply to a candidate's personal funds contributed to their own campaign. However, a city or county candidate in a city or county that has not already enacted a contribution limit, may not have loans to their campaign with an outstanding balance of more than \$100,000 at any time. A candidate may not charge interest on a loan they make to the campaign. The \$100,000 limit on personal loans applies to loans from the candidate's personal funds as well as loans from a commercial lending institution which the candidate lends to their campaign. "Campaign" includes both the primary and general, or special and special runoff, elections. However, a candidate may loan each committee for a different office or term of office up to \$100,000.

Extensions of Credit

When there is an agreement with the provider of goods or services that a city or county candidate in a city or county that has not already enacted contribution limits or committee will pay for the goods or services at a later date, the value of the goods or services may become a contribution to the candidate and be subject to contribution limits if the payment is not made within 45 days. (See Regulation 18530.7.)

Contributions to Other City or County Candidate Committees

A candidate may not make a contribution over the default state contribution limit to another candidate in jurisdictions subject to the default state contribution limit with limited exceptions related to recall elections, legal defense funds, and candidate-controlled ballot measure committees. The limit is the same contribution limit imposed on legislative candidates. This contribution limit applies to the aggregate total of contributions made from the personal funds or assets of the candidate and contributions made by all committees controlled by that candidate.

Contributions Over the Limit

Committees are not in violation of the Act's contribution limit if an "over the limit" contribution is returned to the contributor or the contribution is attributed to another election either: (1) within 14 days of receipt before deposit so long as the committee did not make use of the contribution prior to returning it, or (2) within 14 days of receipt even after deposit, so long as there was **no actual knowledge** the contribution was over the limit when deposited and the committee did not make use of the contribution prior to returning it. If a contribution is returned after it has been deposited it must be reported. A contribution must be reported even if not deposited if it is not returned to the contributor by the close of the reporting period. An over the limit nonmonetary contribution must be returned to the contributor within 14 days of receiving the contribution either in its original form, or in a monetary equivalent greater than or equal to the amount by which its value exceeds an applicable contribution limit. A committee that receives a monetary contribution with **actual knowledge** that the contribution is over the applicable contribution limit in the Act may accept the contribution and return or attribute the portion in excess within 72 hours of receipt or before the date of the election, whichever is sooner without being in violation of the contribution limit. However, a committee is prohibited from making use of the excessive contribution prior to returning or attributing it and the amount of a contribution that may be accepted is capped at twice the applicable contribution limit.

A committee may request that the contributor attribute in writing a contribution to a different election. A committee may automatically attribute a portion of a contribution that is in excess of the applicable limit between the primary and general elections. A committee attributes a contribution when the committee designates the portion of the contribution in excess of the applicable limit to another election.

A committee that receives an excessive contribution **with or without actual knowledge** that the contribution was over the limit must inform the contributor:

- that their contribution was in excess of the applicable limit, and
- if the contribution was automatically attributed to the connected primary or general election, that the contribution was attributed and the contributor may request a refund.

Recurring Contributions

A "recurring contribution" is a contribution from a person to a candidate or committee that is automatically charged to the person's bank account, credit card, or other payment account on a repeated basis, such as weekly or monthly, without approval or any other affirmative consent by the person after their initial contribution to the candidate or committee. A committee must obtain affirmative consent from a person making a recurring contribution at the time of the initial contribution. Any solicitation for a recurring contribution must be in a form that requires affirmative consent from the person making the contribution. Passive action by the contributor, such as failing to uncheck a pre-checked box authorizing a recurring contribution, does not meet the requirement of affirmative consent. A committee that accepts a recurring contribution is required to provide a receipt for each contribution, provide information necessary to cancel the recurring contribution, and immediately cancel a recurring contribution upon request.

A recurring contribution accepted in response to a solicitation that did not require affirmative consent must be returned to the contributor within 14 days of the earlier of the following:

- receipt of a request from the contributor to return the contribution, or
- the date on which the candidate or committee becomes aware that the solicitation of the recurring contribution was in violation of the Act.

A contribution accepted after a contributor requested to cancel a recurring contribution must be returned to the contributor within 14 days of the request to cancel the recurring contribution.

B. Transfers Between a Candidate's Controlled Committees (AB 571)

A city or county candidate in a jurisdiction that has not already enacted contribution limits that has a qualified committee must establish a separate controlled committee and campaign bank account for each specific office. Candidates may not redesignate a committee for one election for another election.

A city or county candidate in a city or county that has not already enacted a contribution limit may transfer funds from their controlled elections committee to another committee. Except as discussed below, funds transferred from one of a city or county candidate's controlled election committees to another are subject to contribution limits. The transferred funds must be attributed to specific contributors of the committee making the transfer and count toward the amount those contributors may give to the committee receiving the transfer.

The committee making the transfer must choose between two attribution methods. The first is "LIFO" (last in, first out). This means that the amount to be transferred will be attributed to the most recent contributors to the transferring committee. The other method is "FIFO" (first in, first out), which means transferred funds will be attributed to the earliest contributors. Once the transferring committee has chosen LIFO or FIFO, it may not change the method of attribution.

Example:

A city council member is running for county supervisor in 2024. The candidate uses the LIFO accounting method to transfer funds from the city council committee to their county supervisor committee as outlined in the table below. Because the 2022 contribution limit is \$4,900, only \$4,900 of Z Corporations original \$5,000 contribution to the city council committee may be transferred to the county supervisor committee. Riley Thomas has already contributed has already contributed \$4,000 to the county supervisor committee, so only \$900 of their original \$1,000 contribution to the city council committee may be transferred to the county supervisor to the county supervisor committee.

Donor Date of Original Contribution		Amount of Original Contribution	Funds Attributed to Contributor	
Taylor Smith	09/25/2020	\$1,000	\$1,000	
Z Corp.	11/02/2020	\$5,000	\$4,900	
Riley Thomas	12/10/2020	\$1,000	\$900	

The committee making the transfer must report the transfer as an expenditure on Schedule E of the Recipient Committee Campaign Statement (Form 460). The committee receiving the transfer must report the transfer on Schedule A as follows:

- The date of the transfer and the name, address, and identification number of the committee making the transfer;
- The name, address and, if applicable, the occupation and employer or committee identification number of the contributor to whom the transferred funds are being attributed (as disclosed on the campaign statement filed when the contributions were originally received or as contained in the committee's records at the time of the transfer);
- The original date of the transferred contribution; and
- The amount of the transferred contribution, including the cumulative amount received from the contributor in the calendar year and the amount attributed to the contributor per election.

Some electronic filing formats may be different.

Schedule A **Monetary Contributions Received**

SCHEDULE A

Statement covers period

				from <u>x/x/20xx</u>		F	
SEE INSTRUCTIONS ON REVERSE			through <u>x/x/20xx</u>		Page of		
NAME OF FILER Committee t	o Elect Gerard for County Supervisor 2024					I.D. NU	JMBER
DATE RECEIVED	FULL NAME, STREET ADDRESS AND ZIP CODE OF CONTRIBUTOR (IF COMMITTEE, ALSO ENTER I.D. NUMBER)	CONTRIBUTOR CODE *	IF AN INDIVIDUAL, ENTER OCCUPATION AND EMPLOYER (IF SELF-EMPLOYED, ENTER NAME OF BUSINESS)	AMOUNT RECEIVED THIS PERIOD	CUMULATIVE TO DATE CALENDAR YEAR (JAN. 1 - DEC. 31)		PER ELECTION TO DATE (IF REQUIRED)
10/xx/20xx	Gerard for City Council 20xx (Transfer, see below) 49 J Street, Sacramento, CA 95814 (ID 1914287)	☐ IND ☐ COM ☐ OTH ☐ PTY ☐ SCC					
09/25/20xx	Taylor Smith 7239 Hemingway Blvd. Rancho Palos Verdes CA 90274	 ✓ IND COM OTH PTY SCC 	Orthodontist, Smith Smiles	\$1,000	\$1,000		P20xx: \$1,000
11/03/20xx	Z Corporation 2500 7th Avenue Los Angeles, CA 90013	□ IND □ COM ☑ OTH □ PTY □ SCC		\$4,900	\$4,900		P20xx: \$4,900
12/10/20xx	Riley Thomas 1095 Euclid Street La Habra Heights, CA 90631	<pre>✓ IND □ COM □ OTH □ PTY □ SCC</pre>	Dispatcher, La Habra Heights Police Department	\$900	\$4,900		P20xx: \$4,900

The committee making the transfer must maintain records that identify the specific contributors to whom any transferred contributions have been attributed. If the transferring committee is no longer required to maintain detailed records, the receiving committee shall maintain either:

- The full name of the contributor; •
- The date and amount being transferred for each contributor, and ٠ if the contribution is a loan, the interest rate for the loan; and
- The cumulative amount of contributions transferred attributed to • that contributor.

OR

Copies of the transferring committee's original verified and filed • campaign reports that show the original contribution received from each contributor to whom a transferred contribution is attributed.

Exceptions:

- **Surplus Funds:** Campaign funds that are "surplus funds" may not be transferred to a future election committee. A defeated candidate's campaign committee funds become surplus 90 days after the post-election reporting period (either June 30 or December 31) following the election. An officeholder's campaign committee funds become surplus 90 days after leaving office for which the funds were raised. For specific guidance, refer to Regulation 18951.
- Carryover: A city or county candidate in a city or county that has not already enacted a contribution limit may carry over campaign funds from the primary election to the subsequent general election for the same elective office without attribution. Non-surplus campaign funds may be carried over from one city or county election to the next election for the same office without attribution.

To carry over funds from one city or county election to the next election for the same office (e.g., from a 2020 city council election to the 2024 city council election), the funds must be transferred to a new campaign bank account and committee established for the next election, and the transfer must occur after the date of the election for which the funds were raised.

The transferring committee reports the transfer as an expenditure on Schedule E and the committee receiving the funds reports the transfer as an increase to cash on Schedule I.

A candidate that formed a campaign committee for a specific election and chooses not to seek the office and is not listed on the ballot may not "carryover" the funds, but may transfer the funds with attribution to another future election committee.

QUICK TIP: City and county candidates in a city or county that has not already enacted a contribution limit may raise funds after an election only to pay net debts outstanding. Campaign funds may not be carried over to a future election committee if the existing committee has net debt from the prior election.

 Transferring Assets: It is not necessary to value and attribute a committee's usual assets (such as supplies, furnishings, and office equipment) that are being transferred from one controlled committee to another of the candidate's controlled committees. A committee must report the purchase or sale of these assets, but need not report the transfer.

Detailed reports must be maintained on transfers.

C. Post-Election Fundraising: Net Debts Outstanding (AB 571)

City and county candidates in cities and counties that have not already enacted a contribution limit may receive contributions after an election only to pay net debts outstanding from the election. The primary and general elections are separate elections for the purposes of calculating net debt. In addition, the contribution limits applicable to the election apply to any new contributions received to pay net debt.

To calculate net debts outstanding, the following are added together:

- The total amount of unpaid debts, loans, and accrued expenditures incurred with respect to the election;
- An amount necessary to cover the cost of raising funds to pay outstanding debts;
- Costs related to complying with post-election requirements, such as filing campaign statements, and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries, and office supplies; and
- Legal fees and expenses incurred in connection with monitoring a ballot recount or the counting of absentee or provisional ballots.

That amount is reduced by:

- The total cash on hand available to pay those debts and obligations, including: currency; balances on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks; certificates of deposit; treasurer bills; and any other committee investments valued at fair market value; and
- The total amounts owed to the candidate controlled committee in the form of credits, refunds of deposits, returns, or receivables, or a commercially reasonable amount based on the collectability of those credits, refunds, returns, or receivables.

As new funds are received, the amount of the net debts outstanding is reduced. The amount of new contributions may not exceed the amount of net debts outstanding on the date the contribution is received. Any contribution that exceeds the amount of net debts outstanding must be returned to the contributor within 14 days.

Ex 1.1 - Tom ran for district attorney in 2022. After the general election, Tom had \$45,000 in cash left and owed only \$20,000 in accrued expenses from the primary election and none from the general election. Tom may not raise additional funds into the 2022 committee.

Ex 1.2 - Jane ran for county supervisor in 2022. After the primary election, Jane had \$30,000 in cash left and owed \$50,000 in unpaid loans and accrued expenses. Jane may raise \$20,000 to pay this debt, plus an amount needed to cover the fundraising expenses and other administrative costs. All contributions received are subject to the contribution limits that were in effect for the 2020 election.

D. Officeholder Committees (AB 571)

Officeholder committees are not permitted for city and county candidates subject to the default state contribution limit. However, a candidate may use a committee for the officeholder's future election for officeholder expenses. A candidate may also use existing funds in the election committee for current office for officeholder expenses.

E. Other Committees (AB 571)

Legal Defense Committees

City and county candidates and officeholders may establish a legal defense fund to defray attorney's fees and other related legal costs incurred for the candidate's or officeholder's legal defense if the candidate or officeholder is subject to a civil or criminal proceeding, or an administrative proceeding arising directly out of the conduct of an election campaign, the electoral process, or the performance of the officeholder's governmental activities and duties.

A separate bank account and committee must be established. The legal defense committee will file campaign statements at the same times and in the same place as the candidate's election committee.

Contributions raised for a legal defense fund are not subject to contribution limits.

QUICK TIP: The Form 410 must specify the legal dispute or disputes for which the legal defense fund was established.

Legal defense funds may only be raised in an amount reasonably calculated to pay attorney's fees and other legal costs related to the defense of the candidate or officeholder, as well as administrative costs directly related to compliance with recordkeeping and reporting requirements. Legal defense funds may not be used for fundraising, media or political consulting fees, mass mailings or other advertising, or for paying fines, penalties, judgements or settlements, or to return contributions. (Please refer to Regulation 18530.45.)

Recall Election Committees

All candidates and committees that raise and spend funds in connection with a recall election have full reporting and disclosure obligations. The FPPC publishes filing schedules for these elections.

Target Officeholder: A city or county officeholder who is the target of a recall may form a separate committee to oppose the qualification of the recall measure and, if the recall petition qualifies, the recall election. The officeholder has the option of using their existing committee or committee formed for a future election instead.

If a separate committee is formed, the following rules apply:

- The committee may be established only after the officeholder receives a notice of intent to recall under Elections Code Section 11021.
- A Statement of Organization (Form 410) must be filed and a separate bank account must be established.
- The committee name must include the word "recall" and the target officer's name.
- Contributions to the committee are not subject to limits.
- After the recall election, or if the recall petition fails, funds left over become restricted "surplus funds" and must be spent within 30 days (See Chapter 6.)

Replacement Candidate: A candidate running to replace an officeholder who is the target of a recall is subject to the contribution limits. A replacement candidate must file campaign forms (e.g., Form 501, Form 410, Form 497, Form 460) in the same manner as a candidate seeking a regular election.

Committee Primarily Formed to Support or Oppose a Recall: A committee formed to support or oppose a recall is considered to be a ballot measure committee. Refer to FPPC Campaign Disclosure Manual 3 for guidance.

Answering Your Questions

A. If a city or county does not currently have contribution limits set within their ordinance would the state contribution limit be the default?

Yes. The state contribution limit would be the default contribution limit if the city or county ordinance is silent on whether there are contribution limits within that jurisdiction or if there is no city or county ordinance in place.

B. If a city or county has voluntary contribution limits, but no mandatory contribution limits will the state limit be applicable?

Yes. A city or county must enact mandatory contribution limits to avoid the state limit applying to elective city and county offices.

C. Does the default contribution limit also include judicial candidates?

No. Elective city and county offices do not include judicial offices.

D. Can a city or county ordinance be less restrictive than the AB 571 limit (e.g., the city or county limit is set higher than the state limit)?

Yes. A city or county can set contribution limits higher than the default state limit.

E. If a city or county imposes contribution limits, is the Commission responsible for enforcing those limits?

No. The Commission will not regulate the administration or enforcement of the penalties. Cities or counties with existing limits or that adopt their own limits are not subject to the state limit and may impose their own penalties for violations. F. If a city or county has imposed contribution limits for particular city or county offices (e.g., Board of Supervisors), do those limits also apply to other positions such as the District Attorney or would the default state limit apply if a particular position is not specifically addressed by the city or county?

The default state contribution limit would apply to other positions which the city or county has not set contribution limits. A city or county ordinance must explicitly state the city or county contribution limits and for which elective offices those limits will apply. A city or county may adopt a general provision implementing a contribution limit for all elective city and county offices in that jurisdiction.

G. Does AB 571 apply to special district or school district elections?

No. AB 571 applies only to city and county elections for offices that a city or county has not implemented its own contribution limit.

H. Does AB 571 apply to County Superintendent of Schools or the office of County Board of Education?

AB 571 does apply to the office of County Superintendent of Schools because it is considered a "county" office. However, the office of County Board of Education is not subject to AB 571 because it is not considered a "county" position.

I. Can candidates that are subject to the AB 571 contribution limit open an officeholder committee?

No. Officeholder committees are not permitted for candidates subject to the AB 571 contribution limit. However, a candidate may use a committee for the officeholder's future election for officeholder expenses. A candidate may also use existing funds in the election committee for current office for officeholder expenses.

J. If a contribution was received for an election occurring after January 1, 2021, prior to the January 1, 2021, does this contribution count towards the AB 571 contribution limit after January 1, 2021?

No. The Commission adopted a formal opinion on April 15, 2021 that states contributions made prior to the effective date of AB 571 are not aggregated with contributions made on or after the effective date of AB 571 for purposes of the new contribution limit. Therefore, if someone contributed up to or above the current limit to an AB 571 committee prior to January 1, 2021 the same person can give additional contributions to the same committee up to the AB 571 contribution limit on or after January 1, 2021.

K. If a contributor gave \$10,000 in 2020 (prior to the AB 571 limit going into effect) to a committee for a 2022 primary election, what happens?

The AB 571 contribution limit does not apply to contributions made prior to January 1, 2021 so a contribution of this amount is permissible.

L. Does the AB 571 contribution limit apply to county central committee candidates?

No. AB 571 imposes a contribution limit on city and county elective offices when a local jurisdiction has not already done so. Local jurisdictions are prohibited from placing contribution limits on county central committee candidates; therefore AB 571 is not applicable to these offices.

M. An AB 571 candidate for city council would like to send out a request for contributions to their constituents. Do they need to include anything specific in the request?

Yes. A candidate that is subject to AB 571 must have the following information in the solicitation: the name of the controlled committee soliciting contributions, and the specific office for which those contributions will be used.

N. If an AB 571 candidate is the subject of a recall, is their committee to oppose the recall subject to contribution limits?

No. There are no contribution limits for a committee controlled by a candidate that is the subject of a recall that is formed to oppose the recall. O. An AB 571 candidate has debts for an election held after January 1, 2021, may the candidate terminate their committee?

No. If a candidate-controlled committee has outstanding debts for an election held after January 1, 2021, they may not terminate without resolving or paying off the debt. When the committee has no net debts outstanding, the committee must be terminated within 24 months after the earliest of the date the candidate is defeated, leaves office, or the term of office for which the committee was formed ends, or, for withdrawn candidates no later than 24 months after the election from which the candidate withdrew. Please see Regulation 18404.1 for more on termination requirements.

P. If a local jurisdiction, which is subject to AB 571 passes a local campaign contribution ordinance, are the candidates still subject to AB 571?

No. They would no longer be subject to AB 571.

Authority

The following Government Code sections and Title 2 regulations provide authority for the information in this chapter:

Government Code Sections

82015	Contribution.
82015.5	Contribution; Aggregation.
82022.5	Election-Related Activities.
82025	Expenditure.
82047	Person.
85204.5	Special Election Cycle and Special Runoff Election Cycle.
85301	Limits on Contributions from Persons.
85303	Limits on Contributions to Committees and Political Parties.
85304.5	Legal Defense Fund; Local Candidates and Elected Officeholders.
85305	Restrictions on Contributions by Candidates.
85306	Transfers Between a Candidate's Own Committees; Use of Funds Raised Prior to Effective Date.
85307	Loans.
85314	Special Elections and Special Runoff Elections as Separate Elections.
85315	Elected City and County Officer Recall Committees.
85316	Post-Election Fundraising Restrictions; City and County Officeholder Accounts.
85317	Carry Over of Contributions.
85318	Contributions Received for Primary and General Elections.
85319.5	Attribution of Contributions.
85701.5	Recurring Contributions.
85702.5	Default Contribution Limits for City and County Jurisdictions.
89519	Use of Surplus Campaign Funds.

Title 2 Regulations

- 18215 Contribution. 18404.1 Termination and Reopening of Committees. 18421.1 Disclosure of the Making and Receipt of Contributions. 18421.4 Reporting Cumulative Amounts for Elections and Recipient Committees. Reporting an Expenditure by a Candidate 18421.8 18521 Establishment of Separate Controlled Committee for Each Campaign Account. 18521.5 Ballot Measure Committees Controlled by Candidates for Elective State, City, or County Office Written Solicitation for Contributions. 18523.1 Transfer of Funds Raised Prior to Proposition 34 Limits. 18530.2 18530.7 Extensions of Credit. 18530.8 Personal Loans. Return of Excessive Contributions. 18531 18531.2 Refunding General Election Contributions. 18531.5 **Recall Elections.** 18531.61 Treatment of Debts Outstanding After an Election 18531.63 Treatment of Debts Outstanding After a City or County Election for Offices Subject to AB 571. 18531.64 Treatments of Debts Outstanding After a City or County Election. 18535 Restrictions on Contributions Between State, City and County Candidates. 18536 Transfer and Attribution of Contributions. 18537 Contribution Limits and Application to Repaid Loans. 18537.1 Carry Over of Contributions. 18545 Contribution Limit and Voluntary Expenditure COLA Formula.
- 18951 Surplus Funds.