
Item 6

Action

Proposed Stipulation

Executive Summary: This item presents a proposed stipulation in Case No. 2020-14, *In the Matter of Mitchell Englander*.

Recommended Action: Approve the proposed stipulation as presented.

Authors: David Tristan, Executive Director
Heather Holt, Deputy Executive Director
Kenneth Hardy, Director of Enforcement

Presenters: Kenneth Hardy, Director of Enforcement
Stephen Colon, Senior Investigator

Proposed Stipulation

In the Matter of Mitchell Englander (Case No. 2020-14)

A. Introduction

This case involves allegations that Mitchell Englander (Englander) failed to comply with City gift limits and disclosure requirements and misused his position as a member of the Los Angeles City Council. Englander, who is represented by Gary Winuk of the Kaufman Legal Group, has agreed to a proposed stipulation admitting the violations, and we recommend that the stipulation be approved. A copy of the stipulation, which provides additional details and represents the agreement between the parties, is provided in Attachment A.

B. Law

City law imposes restrictions on the activities of current and former City officials and employees to help ensure fair, equitable, and transparent government. For example, City law incorporates the limit in the California Political Reform Act (PRA) on the monetary value of gifts that a City official may receive from a single source during a calendar year. Los Angeles Municipal Code (LAMC) § 49.5.8(B); Cal. Gov't Code § 89503. In 2017, a City official was prohibited from accepting more than \$470 in gifts from a single source. Cal. Gov't Code § 89503; 2 Cal. Code Regs. § 18940.2 (2017).

City law requires that City officials adhere to certain disclosure requirements of the PRA. When a City official receives one or more gifts from a single disclosable source with a total value of at least \$50, the official must disclose the gifts using the state's financial disclosure form, known as a Statement of Economic Interests (SEI) or California Fair Political Practices Commission (FPPC) Form 700. LAMC § 49.5.9(B)(1)(d); Cal. Gov't Code § 87203; 2 Cal. Code Regs. § 18940(d). City officials are required to file a Form 700 with the Ethics Commission annually. Cal. Gov't Code §§ 87203, 87500(f); LAMC § 49.5.9(A).

City officials and employees are prohibited from misusing or attempting to misuse their City positions or authority to create or attempt to create a private advantage or disadvantage of any kind for any person. LAMC § 49.5.5(A). Every two years, City officials are required to complete training regarding a variety of ethics matters, including gifts and the misuse of a City position. LAMC § 49.5.15(A).

C. Facts

Englander, a member of the City Council during the relevant time, was required to disclose his economic interests pursuant to the PRA and City law, comply with City and state gift requirements and restrictions, and complete mandatory ethics training.

On January 16, 2020, a federal grand jury indictment was returned against Englander in the United States District Court, Central District of California. On March 27, 2020, Englander entered a guilty plea and signed a written agreement in which he admitted to participating in a scheme to falsify material facts, in violation of United States Code, Title 18 (18 U.S.C.) section 1001(a)(1). In his plea agreement, Englander admitted that, on June 1, 2017, he traveled to Las Vegas, Nevada, with Businessperson A, Developer A, two City staff persons, and others, and that he received gifts from Businessperson A and Developer A in the form of travel, a hotel room, cash, casino chips, food and drink, transportation, and other things. In his plea agreement, Englander further admitted that he attended a golf tournament at a casino resort in Palm Springs, California from June 10 through June 12, 2017, and that there he received cash from Businessperson A.

Englander accepted gifts from two persons that significantly exceeded the gift limit. Ethics Commission staff determined that the gifts Englander accepted from Businessperson A exceeded the gift limit by at least \$19,943.50, and the gifts Englander accepted from Developer A exceeded the gift limit by at least \$1,196.67.

On April 2, 2018, Englander filed a Form 700 with the Ethics Commission disclosing financial interests he held or obtained during 2017. Englander signed the form under penalty of perjury; however, the filing significantly underreported the total amount of gifts he received from Businessperson A and entirely omitted the gifts he received from Developer A.

During an investigation conducted by the FBI and the United States Attorney's Office, Englander repeatedly lied about the gifts he received from Businessperson A and Developer A and also directed another person to lie to federal agents about the gift transactions in Las Vegas. The lies were intended to conceal Englander's violations from law enforcement. On January 25, 2021, Englander was sentenced in federal court for falsifying material facts, in violation of 18 U.S.C. section 1001(a)(1). He was ordered to pay a fine of \$15,000 and was committed to a term of 14 months in state prison, followed by three years of probation.

D. Penalty

In administrative enforcement matters, the commissioners may impose a penalty up to the greater of \$5,000 per violation or three times the amount that was improperly reported, spent, or received. Los Angeles City Charter § 706(c)(3). In this case, the maximum charged penalty is \$79,830.50, calculated as follows:

Count 1:	\$59,830.50 (\$19,943.50 x 3)
Count 2:	\$5,000.00
Count 3:	\$5,000.00
Count 4:	\$5,000.00
Count 5:	<u>\$5,000.00</u>
	\$79,830.50

The Ethics Commission is required to consider all relevant circumstances before assessing penalties. LAAC § 24.27(h)(2). In considering the penalty in this case, enforcement staff noted that Englander has no prior enforcement history with the Ethics Commission. See LAAC § 24.27(h)(2)(D). Englander has served a 14-month sentence, is serving three years of probation, and has paid a \$15,000 fine in the federal criminal court proceeding. Englander also expressed regret for his actions during the federal sentencing and to the enforcement staff.

However, the enforcement staff also noted the following aggravating circumstances: (1) Despite completing ethics training on multiple occasions during his long tenure with the City, as both a City Council staff member and as a City Councilmember, Englander did not consult the Ethics Commission about how to comply with the law; (2) As a result of completing ethics training, Englander was or should have been very familiar with the gift and reporting requirements of the GEO and the PRA; (3) Englander's actions were deliberate and indicate an intent to conceal the violations and deceive the public; and (4) The violations are serious because the monetary value of the gifts received significantly exceeded the gift limit, because of the nature of the gifts and the circumstances in which they were received, and because Englander held a particularly important position of public trust as a City Councilmember at the time of the violations. See LAAC §§ 24.27(h)(2)(A)–(C), (F).

Based on the specific facts and circumstances in this case, staff recommends resolving this case by imposing a \$79,830.50 penalty. The recommended penalty is intended to promote the equitable treatment of similar respondents, encourage the early resolution of violations, and reflect the serious nature of the violations.

Attachment:

A Proposed stipulation in Case No. 2020-14 (Mitchell Englander)

KENNETH HARDY, SBN 162181
Director of Enforcement
KIRSTEN PICKENPAUGH, SBN 207417
Deputy Director of Enforcement
Los Angeles City Ethics Commission
200 North Spring Street
City Hall, 24th Floor
Los Angeles CA 90012
(213) 978-1960

Complainant

BEFORE THE LOS ANGELES CITY ETHICS COMMISSION

In the Matter of:

Case No. 2020-14

MITCHELL ENGLANDER,

STIPULATION AND ORDER

Respondent.

Kenneth Hardy, Director of Enforcement for the Los Angeles City Ethics Commission (Ethics Commission), and Mitchell Englander (respondent) agree to the following:

1. This stipulation will be submitted to the Ethics Commission members for consideration at their next meeting.
2. If approved by the Ethics Commission members, this stipulation and the accompanying order will be the final disposition of this matter with respect to the respondent.
3. The respondent understands and knowingly and voluntarily waives all procedural rights under Los Angeles City Charter §§ 706 and 709 and Los Angeles Administrative Code §§ 24.26 and 24.27. These rights include but are not limited to receiving an accusation, having the Ethics Commission members or an impartial administrative law judge hear the matter, personally appearing at an administrative hearing, confronting and cross-examining witnesses testifying at a hearing, and subpoenaing witnesses to testify at a hearing.
4. The respondent understands and knowingly and voluntarily waives all rights to seek judicial review of any action by the Ethics Commission on this matter.

5. The exhibit that is attached and incorporated by reference is a true and accurate summary of the facts in this matter. The respondent has violated City law as described in the Exhibit.

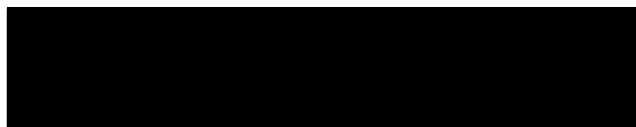
6. The respondent will pay a total penalty in the amount of **\$79,830.50**. Before August 17, 2022, the respondent will make an initial payment of \$39,915.25, which will be held by Ethics Commission staff until the Ethics Commission members issue the order in this matter. The respondent will pay the remaining \$39,915.25 on or before August 31, 2022.

7. All payments will be made in the form of a cashier's check payable to the "General Fund of the City of Los Angeles." Failure to make a required payment will render the entire balance immediately due and payable. In addition, the Ethics Commission staff may renew its enforcement action against the respondent, and the Director of Enforcement may seek sanctions.

8. If the Ethics Commission members do not approve this stipulation, it will become null and void. Within ten business days after the Ethics Commission meeting at which the stipulation is disapproved, the Ethics Commission staff will return all payments tendered by the respondent in connection with this stipulation.

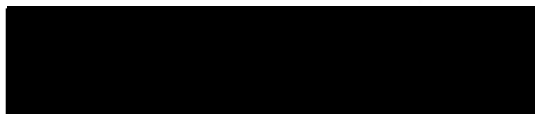
9. If the Ethics Commission members do not approve the stipulation and a full evidentiary hearing becomes necessary, the stipulation and all references to it are inadmissible, and the Ethics Commission members, Executive Director, and staff will not be disqualified because of prior consideration of this stipulation.

DATED: 7/21/22



KENNETH HARDY
Director of Enforcement
Los Angeles City Ethics Commission
Complainant

DATED: July 21, 2022



MITCHELL ENGLANDER
Respondent

DATED: July 21, 2022



GARY WINUK
Kaufman Legal Group
Counsel for Respondent

ORDER

The Los Angeles City Ethics Commission considered the stipulation in Case No. 2020-14 at its meeting on August 17, 2022. The members of the Ethics Commission approved the stipulation and hereby order Mitchell Englander to pay a fine of **\$79,830.50** to the City of Los Angeles in accordance with the terms of the stipulation.

DATED: _____

Shedrick Davis, President
Los Angeles City Ethics Commission

EXHIBIT

I. INTRODUCTION

This case arose through media reports of a federal investigation at City Hall. Mitchell Englander (Englander), who is represented by Gary Winuk of the Kaufman Legal Group, admits that he violated City law by failing to comply with City gift limits and disclosure requirements and by misusing his position as a member of the Los Angeles City Council.

II. APPLICABLE LAW

The Ethics Commission is charged with the impartial and effective administration, implementation, and enforcement of the City's governmental ethics laws. Los Angeles City Charter (Charter) §§ 702, 706. The Ethics Commission's enforcement processes are governed by the Charter and by ordinance. *Id.*; Los Angeles Administrative Code (LAAC) §§ 24.21–24.29.

To prevent conflicts of interests and promote public trust in government, the City adopted the Governmental Ethics Ordinance (GEO), an ordinance that governs the conduct and disclosure responsibilities of City officials and other persons. Los Angeles Municipal Code (LAMC) § 49.5.1 *et seq.* A City official is “an elected City officer or an agency board member, officer, employee, commissioner, or consultant who, because of the individual's service to [a City] agency, is required to file a statement of economic interests pursuant to the Political Reform Act.” LAMC § 49.5.2(C).

The GEO incorporates the limit in the California Political Reform Act (PRA) on the monetary value of gifts that a City official may receive from a single source during a calendar year. LAMC § 49.5.8(B); Cal. Gov't Code § 89503. In 2017, a City official was prohibited from accepting more than \$470 in gifts from a single source. Cal. Gov't Code § 89503; California Code of Regulations, Title 2 (2 Cal. Code Regs.) § 18940.2 (2017).

The GEO requires that City officials adhere to certain disclosure requirements of the PRA. When a City official receives one or more gifts from a single source with a total value of at least \$50, the official must disclose the gifts using the state's financial disclosure form, known as a Statement of Economic Interests (SEI) or California Fair Political Practices Commission (FPPC) Form 700. LAMC § 49.5.9(B)(1)(d); Cal. Gov't Code § 87203; 2 Cal. Code Regs. § 18940(d). City officials are required to file a Form 700 with the Ethics Commission annually. Cal. Gov't Code §§ 87203, 87500(f); Charter § 702(c).

Additionally, the GEO promotes ethical government by prohibiting City officials from misusing their City positions to create a private advantage or disadvantage for themselves or someone else.

LAMC § 49.5.5(A). In full, LAMC section 49.5.5(A) states:

City officials, agency employees, appointees awaiting confirmation by the City Council, and candidates for elected City office shall not misuse or attempt to misuse their positions or prospective positions to create or attempt to create a private advantage or disadvantage, financial or otherwise, for any person.

A person is subject to administrative enforcement for violating a provision of the City's governmental ethics laws. Charter § 706; LAMC § 49.5.16(D).

To help ensure that City officials understand the laws that apply to them, they are required to periodically complete ethics training. LAMC § 49.5.15(A).

III. FACTS

Englander was a City Council staff member from 2003 to 2011. On March 8, 2011, Englander was elected to represent Council District (CD) 12. He was re-elected in 2015 and remained in office until he resigned at the end of 2018. He served as President Pro-Tempore of the City Council from 2013 to 2018.

Englander was a City official who was required to disclose his economic interests pursuant to the PRA, comply with City and state gift requirements and restrictions, and complete mandatory ethics training. LAMC §§ 49.7.5.2(C), (F); 49.5.8(A), (B). Englander filed a Form 700 annually from 2003 to 2018. He completed the ethics training on at least four occasions.

On January 16, 2020, following an investigation by the Federal Bureau of Investigation (FBI) and the United States Attorney's Office (USAO), a federal grand jury indictment was returned against Englander in the United States District Court, Central District of California. On March 27, 2020, Englander entered a guilty plea and signed a written agreement in which he admitted to participating in a scheme to falsify material facts, in violation of United States Code, Title 18 (18 U.S.C.) section 1001(a)(1). Englander notes that, in the federal case, he was not charged with and did not plead guilty to bribery or to otherwise seeking, receiving, or accepting anything of value in return for being influenced in the performance of any official act as a City Council member.

In his plea agreement, Englander admitted the following:

- Englander traveled to Las Vegas, Nevada, with Businessperson A, Developer A, two City staff persons, and others, on June 1, 2017. Businessperson A was described in the indictment as the owner of several businesses in Los Angeles who hoped to increase his business opportunities in the City.
- In Las Vegas, Businessperson A provided complimentary hotel rooms to Englander and others at a resort and casino, as well as complimentary transportation from the airport to the resort.

- On the day of their arrival, Englander met with Businessperson A at the resort, where he accepted an envelope containing \$10,000 cash. Later that day, he accepted approximately \$1,000 in casino chips from Businessperson A and used them to gamble. Englander later returned those chips after gambling.
- That evening, Businessperson A provided dinner and drinks for Englander, Developer A, at least three others, and himself at a restaurant in the resort. Businessperson A was charged approximately \$2,481 for the dinner and drinks.
- After dinner, the group took a limousine to a nightclub, where Businessperson A paid approximately \$24,000 for bottle service and alcohol for Englander, Developer A, and the others. Developer A paid approximately \$10,000 for additional bottle service and alcohol for Englander and the group.
- From approximately June 10 through June 12, 2017, Englander attended a golf tournament at a casino resort in Palm Springs, California. On or about June 12, Englander met with Businessperson A in the casino, where he accepted an envelope containing cash in the amount of \$5,000.

Englander accepted gifts from two persons that significantly exceeded the gift limit. Ethics Commission staff determined that the per-person value of the food, drinks, and bottle service provided in Las Vegas (total payments divided by six) was \$4,413.50 from Businessperson A and \$1,666.67 from Developer A. As a result, the gifts Englander accepted from Businessperson A exceeded the gift limit by at least \$19,943.50, and the gifts Englander accepted from Developer A exceeded the gift limit by at least \$1,196.67.

On April 2, 2018, Englander filed a Form 700 with the Ethics Commission disclosing financial interests he held or obtained during 2017. Englander signed the form under penalty of perjury; however, the filing significantly underreported the total amount he received from Businessperson A and entirely omitted the gift he received from Developer A.

During the investigation conducted by the FBI and the USAO, Englander repeatedly lied about the gifts he received from Businessperson A and Developer A and also directed another person to lie to federal agents about gift transactions in Las Vegas. The lies were intended to conceal Englander's violations from law enforcement.

On January 25, 2021, Englander was sentenced in federal court for falsifying material facts, in violation of 18 U.S.C section 1001(a)(1). He was ordered to pay a fine of \$15,000 and was committed to a term of 14 months in state prison, followed by three years of probation.

IV. VIOLATIONS

Englander admits that he violated City law as follows:

COUNTS 1 – 2: ACCEPTING EXCESS GIFTS

Count 1: Englander violated LAMC section 49.5.8(B) on or about June 1 and June 12, 2017, by accepting at least an estimated \$20,413.50 in cash, casino chips, food, drinks, alcohol, bottle service, transportation, and lodging from Businessperson A in Las Vegas, Nevada, and Palm Springs, California, which exceeded the allowable gift limit by at least \$19,943.50.

Count 2: Englander violated LAMC section 49.5.8(B) on or about June 1, 2017, by accepting an estimated \$1,666.67 in bottle service and alcohol from Developer A at a Las Vegas, Nevada, nightclub, which exceeded the allowed gift limit by \$1,196.67.

COUNT 3: MISUSING A CITY POSITION

Count 3: Englander violated LAMC section 49.5.5(A) on or about June 1 and 12, 2017, by misusing his position as a member of the City Council to create a private advantage for himself, specifically, by using his position as a vehicle to obtain gifts from Businessperson A and Developer A that exceeded the gift limits and by keeping the gifts secret.

COUNTS 4 – 5: FAILING TO DISCLOSE GIFTS

Count 4: Englander violated LAMC section 49.5.9(A) on April 2, 2018, by failing to disclose on his annual Form 700 at least \$20,413.50 in cash, casino chips, food, drinks, alcohol, bottle service, transportation, and lodging that he received from Businessperson A on or about June 1 and June 12, 2017.

Count 5: Englander violated LAMC section 49.5.9(A) on April 2, 2018, by failing to disclose on his annual Form 700 an estimated \$1,666.67 in bottle service and alcohol that he received from Developer A on or about June 1, 2017.

V. PENALTY

Los Angeles City Charter § 706(c)(3) establishes the penalty formula for administrative actions taken by the Ethics Commission. The maximum penalty is the greater of \$5,000 per violation or three times the amount that was improperly reported, spent, or received.

In this case, the maximum charged penalty is \$79,830.50, calculated as follows:

Count 1:	\$59,830.50 (\$19,943.50 x 3)
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The Ethics Commission is required to consider all relevant circumstances before assessing penalties. LAAC § 24.27(h)(2). In considering the penalty in this case, enforcement staff noted that Englander has no prior enforcement history with the Ethics Commission. *See* LAAC § 24.27(h)(2)(D). Englander has served a 14-month sentence, is serving three years of probation, and has paid a fine in the federal criminal court proceeding. Englander also expressed regret for his actions during the federal sentencing and to the enforcement staff.

However, the enforcement staff also noted the following aggravating circumstances: (1) Despite completing ethics training on multiple occasions during his long tenure with the City, as both a City Council staff member and as a City Councilmember, Englander did not consult the Ethics Commission about how to comply with the law; (2) As a result of completing ethics training, Englander was or should have been very familiar with the gift and reporting requirements of the GEO and the PRA; (3) Englander's actions were deliberate and indicate an intent to conceal the violations and deceive the public; and (4) The violations are serious because the monetary value of the gifts received significantly exceeded the gift limit, because of the nature of the gifts and the circumstances in which they were received, and because Englander held a particularly important position of public trust as a City Councilmember at the time of the violations. *See* LAAC §§ 24.27(h)(2)(A)–(C), (F).

Based on the specific facts and circumstances in this case, staff recommends resolving this case by imposing a \$79,830.50 penalty. The recommended penalty is intended to promote the equitable treatment of similar respondents, encourage the early resolution of violations, and reflect the serious nature of the violations.