



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
1102 Q Street • Suite 3000 • Sacramento, CA 95811
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January 23, 2023

Steven Churchwell
[REDACTED]

Lynette Lee Eng

Via email: lleeng@losaltosca.gov

Re: Closure Letter FPPC No. 2020-01130; Lynette Lee Eng

Dear Steven Churchwell and Lynette Lee Eng,

The Enforcement Division of the Fair Political Practices Commission enforces the provisions of the Political Reform Act (the “Act”).¹ This letter is in response to an anonymous complaint alleging that Lynette Lee Eng (“Eng”), as a city council member for the City of Los Altos, had a conflict of interest with respect to several decisions in 2018, 2019, and 2020. The Enforcement Division completed its investigation and found that the allegations have been disproven. As such, the Enforcement Division will close its file on this matter without further action.

No public official at any level of state or local government may make, participate in making, or in any way attempt to use their official position to influence a governmental decision in which they know or have reason to know they have a financial interest.² A public official has a financial interest in a decision if it is reasonably foreseeable the decision will have a material financial effect on the official’s income.

To determine if a public official’s participation in a governmental decision is a conflict of interest, there is a determination of the reasonable foreseeability that the governmental decision will have a financial effect on the official’s financial interest. For interests that are not explicitly involved in the decision, the effect must be more than theoretical or hypothetical, but must be a realistic possibility. Factors to consider are the extent to which the occurrence is contingent upon intervening events, whether the official should anticipate a financial effect when using appropriate due diligence and care, and whether the interest is the type that would typically be affected by the governmental decision.

On January 23, 2018, the City of Los Altos considered entering into a professional services agreement for consultant services to provide technical expertise in working to prevent airplane noise generated by a local airport. On August 28, 2018, the City considered whether to join a

¹ The Political Reform Act is contained in Government Code sections 81000 through 91014, and all statutory references are to this code. The regulations of the Fair Political Practices Commission are contained in sections 18109 through 18997 of Title 2 of the California Code of Regulations.

² Section 87100.

Roundtable involving other local stakeholders as a vehicle to address issues with aircraft noise and flight patterns. The complaint alleged that Eng had a conflict of interest when participating and voting on these decisions because Eng receives income from SkyWest, a local airline. As the source of income is not explicitly involved in either decision, the conflict analysis must consider if it is reasonably foreseeable for the decision to have a financial effect on the airline. The decisions at issue involve a contract to have an expert work with the City to reduce airplane noise, largely by working with the Federal Aviation Agency ("FAA") and to join a roundtable to work on the same issue with other stakeholders. No proposal or action is contemplated beyond hiring technical experts and joining a roundtable to further work on the issue the issue. Even supposing that the decision led to changes in flight paths, that effect would be contingent on intervening events, such as actions by the FAA, the local airport, and by other cities and stakeholders. Therefore, it is not reasonably foreseeable that either decision would have a financial effect on SkyWest.

On April 23, 2019 and July 30, 2019, Eng participated in and voted on decisions relating to the bid prequalification and the final contract approval for a contract award. The complainant alleged that Eng had a conflict of interest because Eng's spouse receives income from a contractor, DPR Construction, who theoretically could have bid for this contract. For there to be a conflict, the decision must have some reasonably foreseeable financial effect on DPR. The April 23 decision determining the prequalifications for bidders for a construction contract is not likely to have a foreseeable financial effect on financial interest (DPR) because the financial effect is contingent upon intervening events. Those intervening events include whether the financial interest chooses to bid, what other companies bid, and the evaluation of the bids by staff. The July 30 decision involving the approval of a bid for a contract is unlikely to affect the financial interest because the contract did not involve the financial interest, and the existence of the approved contract would not impact the financial interest.

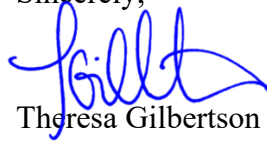
On November 19, 2019, the City Council considered the first reading of Ordinance 2019-468 and Resolution 2019-48 related to the rezoning and amendment of the General Plan's land use designations for city-owned parcels. The City Council's vote on the Ordinance and Resolution affected a parcel located within 500 feet of Eng's personal residence. Eng voted on this procedural decision. On December 10, 2020, Eng recused from the decision on advice of counsel. The minutes do not reflect the reason for the disqualification. According to Eng's counsel, the recusal was believed to be necessary because Eng's real property interest was within 500 feet of the subject of the decision. However, the Enforcement Division has determined that there was no conflict of interest with respect to this decision. The decision was not to change the use or intensity of use of the parcels, but rather to reflect the current and ongoing use of the site. At the time, the parcels at issue, referred collectively as Grant Park, were zoned for single family residential. The proposal would change the zoning and land use designation to Public and Community Facilities and Parks respectively. As the zoning change was merely to reflect the actual use of the parcels, it is unlikely that the zoning change would have any material financial effect on Eng's real property interest.

Even though we are closing our file in the matter, please be advised of the conflict of interest provisions of the Act, including the provisions on proper recusal, in any future actions you may take. If you need guidance regarding the Act's conflict of interest provisions, contact the

Commission's Advice team by calling 1-866-275-3772 or sending an email to advice@fppc.ca.gov. There is also information pertaining to the conflict of interest provisions available on the Commission's website, www.fppc.ca.gov.

If you have any questions regarding this matter, please feel free to contact me at 916-323-6421.

Sincerely,



Theresa Gilbertson
Senior Commission Counsel
Enforcement Division