



California Fair Political Practices Commission

March 22, 1988

Honorable Robert C. Cheasty
Mayor, City of Albany
1000 San Pablo Avenue
Albany, California 94706

Re: Your Request for Advice
Our File No. A-88-081

Dear Mayor Cheasty:

You have requested advice about application of the Political Reform Act (the "Act")^{1/} to your duties as mayor of the City of Albany.

QUESTION

You own a single-family home suitable for the addition of a second unit. Are you disqualified from participating in a decision on parking requirements for second units?

CONCLUSION

Owners of single-family homes to which second units may be added are a significant segment of the general public in the City of Albany. Consequently, you are not disqualified from participating in a decision to change the parking requirements for second units.

FACTS

You are the mayor of the City of Albany. You also own a single-family home suitable for the addition of a second unit.

In 1978, the citizens of Albany passed a zoning initiative that requires two off-street parking spaces for each new unit. The present ordinance for second units took effect in 1983 and incorporated the parking requirement. It affects about 2,500 of the 3,800 to 3,900 single-family homes in Albany or 60 to 70 percent of the whole single-family housing stock. The additional parking spaces must meet front, side, and rear yard

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

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setback requirements that are difficult to meet, even if the lot is the required minimum size of 4,000 square feet. Since 1983, the city has approved two new second units and legalized three pre-existing units. The city planning commission rejected your application to build a second unit because the application did not meet the city's parking requirement for second units.

The city council will be considering amending the present interpretation of the parking requirement. Most homes in Albany were built before 1978; many have two parking spaces. The city council will decide whether to allow owners of homes built before 1978 to count one of those parking spaces toward the two-space parking requirement for second units. Then, applicants to build second units would have to put in only one more parking space.

ANALYSIS

A public official is prohibited from making, participating in making, or in any way attempting to influence a governmental decision in which he knows or has reason to know he has a financial interest. (Section 87100.)

You would have a disqualifying financial interest in a decision that would materially affect real property in which you have an interest worth \$1,000 or more, unless the effect were not distinguishable from the effect on a significant segment of the general public. (Section 87103(b); Regulation 18703, copy enclosed.)

Regulation 18702.1(a)(3) (copy enclosed) requires your disqualification if a governmental decision involves the actual or permitted use of real property in which you have a direct interest of \$1,000 or more. Nevertheless, disqualification is not required if the effect of such a decision on your real property will not be distinguishable from the effect on the public generally. (Regulation 18702.1(c)(1).)

In its Owen opinion the Commission concluded that owners of single-family homes were a significant segment of the public. (In re Owen (1976) 2 FPPC Ops. 77, 81, copy enclosed; Regulation 18703.) Such a group has many members with diverse interests. The group's only common feature is ownership of single-family homes.

You own a single-family home. You are one of about 2,500 owners of single-family homes suitable for the addition of a second unit. The 2,500 lots make up 60 to 70 percent of all

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the single-family housing stock in the City of Albany. The owners of these lots are a significant segment of the general public. A decision to change the parking requirements for second units would have an effect on your property similar to the effect on a significant segment of the public. (Regulation 18703.)

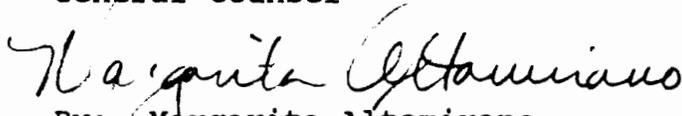
Therefore, the effect on your real property would not be distinguishable from the effect on the general public. Consequently, you are not disqualified from participating in a decision to change the parking requirements for second units.

Of course, the "public generally" exception might not apply if a change in the parking requirement would affect your property differently from other single-family homes. (Miller Advice Letter, No. A-82-119, copy enclosed.) For example, if new setback requirements allowed you and only 100 other single-family owners to add second units, you and those owners might not constitute a significant segment of the public. You then would be disqualified.

I hope this letter has given you the advice you requested. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:mek



City of Albany

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1000 SAN PABLO AVE. • ALBANY, CA 94706 • TELEPHONE 644-8535

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OFFICE OF THE MAYOR

February 12, 1988

Fair Political Practices Commission
428 J Street, Suite 800
P.O. Box 807
Sacramento, CA 95804-0807

Attn: John McLean

RE: Conflict of Interest/Second units in Albany, CA

Dear Mr. McLean:

Pursuant to our telephone conversation, I have gotten a memo from our Director of Planning (copy enclosed) which outlines the scope of the question in my city, Albany.

To refresh your memory, this issue involves second units in Albany. As we discussed over the phone, sometime around 1984 or 1985 I applied for a variance for second unit which was turned down by the Planning and Zoning Commission because of their interpretation of the parking requirements for such a unit.

The parking requirements were interpreted to mean that, regardless of the number of parking spaces the applicant had existing on the lots already, the applicant was required to provide two additional off-street parking spaces in order to put in a second unit. Moreover, the additional parking spaces had to meet front yard, side yard and rear yard setback requirements.

As we discussed, Albany is a city that is almost completely built. Most of the housing stock was built prior to 1957 and, when built, did not require the installation of off-street parking. The effect of the parking requirement was to preclude the creation of second units. Pursuant to the Mello Act, Albany created a mechanism for allowing new second units to be built within the city residential single-family neighborhoods. However, the interpretation of the parking requirements has been such that, since 1984, only two new second units have been approved in the city.

As the memorandum from the City Planner shows, a large portion of the housing stock in Albany is affected by this interpretation.

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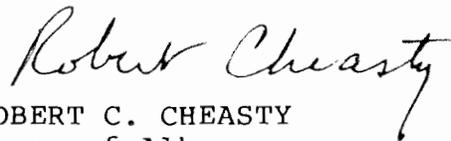
Because I had applied for a use permit and variance to put a second unit in my house, I felt that I should abstain from voting on the issue. However, twice the issue has been raised and twice the issue has gone down on a 2/2 split with my abstention. My problem is that I believe that second units are an unobtrusive way to provide low income housing stock in a city such as Albany. In addition, they allow first-time buyers and elderly residents to use part of their housing to create income that is needed either to get into the housing market or to supplement shrinking income. Unless I can vote on the issue, my presence on the Council is preventing the passage of a reasonable interpretation of the parking requirements.

One of the curious aspects to my abstention was the fact that other members of the Council felt that second units might or might not improve or detract from the value of their house and the value of their neighborhood. I was the only abstention as I had directly applied for a second unit. However, had I joined my colleagues who opposed second units, I would have felt equally at conflict in that, in their opinion, changing the parking interpretation would affect the value of their homes and the quality of their neighborhoods. In my opinion, their conflict was no less nor more than mine. They certainly will not be interested in installing a second unit.

I would appreciate an opinion as to whether I have a conflict of interest under the Fair Political Practices Act.

Thank you very much for your time and consideration.

Sincerely,



ROBERT C. CHEASTY
Mayor of Albany

RCC:tw
cc: City Attorney Robert Zweben

TO: Mayor Cheasty
FROM: Claudia Cappio, Planning Director 
RE: Second Unit Information
DATE: December 23, 1987

As you requested, this memo will outline the information regarding second units in Albany:

1) Number of Dwelling Units Which Would Be Affected by Reducing The Parking Requirements: Approximately 2500 dwelling units, or 60 to 70 percent of the total single-family housing stock.

2) With regard to the number of units which have been legally established since 1983, (when the second unit ordinance went into effect), there have been two new units created, and three pre-existing units legalized, for a total of five units.

It should be noted that most home owners are discouraged from applying for a second unit due to the stringent, two additional space parking requirement. The narrow width of most lots, combined with small rear yards, makes this requirement extremely difficult if not impossible to meet, even given the 4,000sf minimum lot size which is required to support a second unit.

If you have any futher questions, please call me at 528-5760.



City of Albany

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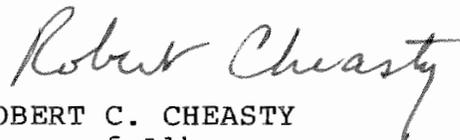
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Dear Mayor Cheasty:

Your letter requesting advice under the Political Reform Act was received on February 22, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Code of Regs. Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

A handwritten signature in cursive script that reads "Diane M. Griffiths".

Diane M. Griffiths
General Counsel

DMG:plh