



## FAIR POLITICAL PRACTICES COMMISSION

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January 8, 2002

Peter N. Brown, City Attorney  
City of Carpinteria  
5775 Carpinteria Avenue  
Carpinteria, CA 93013-2697

**Re: Your Request for Advice  
Our File No. A-01-287**

Dear Mr. Brown:

This letter is in response to your request for advice on behalf of Robert C. Hamer regarding the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1</sup>

### QUESTIONS

1. Would Mr. Hamer violate the Act's prohibition against using or attempting to use his official position to influence a governmental decision should he and his wife file written materials and appear before the Mobile Home Rent Stabilization Board, or a hearing officer, regarding the Vista Application?
2. Would Mr. Hamer violate the Act's prohibition against using or attempting to use his official position to influence a governmental decision should he appear before the Board as a spokesperson on behalf of the Vista residents regarding the Vista Application?
3. Would Mr. Hamer violate the Act's prohibition against using or attempting to use his official position to influence a governmental decision should he, as an individual or as a spokesperson on behalf of the Vista residents, engage in other activities regarding the Vista Application, such as preparing oral and written statements to the media, soliciting support for the residents' position from other groups, and contacting members of the Board regarding the Vista Application?

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<sup>1</sup> Government Code sections 81000 – 91014. Commission regulations appear at Title 2, sections 18109-18997, of the California Code of Regulations.

## CONCLUSIONS

1. No. A public official is permitted to appear, as any member of the general public, before an agency in the course of its prescribed governmental function, to represent himself or herself on matters related solely to his or her personal interests.

2. Yes. There is no provision in the Act that would allow Mr. Hamer to act as a spokesperson on behalf of the Vista residents before the Board, without violating the Act's prohibition against using or attempting to use his official position to influence a governmental decision.

3. As an individual, Mr. Hamer is free to communicate with the media and members of the general public, since communications with these groups are expressly excluded from the definition of "influencing." However, Mr. Hamer may not contact members of the Board regarding the Vista application and when speaking with the press or members of the public, he must make it clear that he is **not** acting as the spokesperson for any person or group other than himself, including the other Vista residents. As explained above, Mr. Hamer may not act as a spokesperson on behalf of any other group or individual.

## FACTS

Robert C. Hamer is a member of the City of Carpinteria Mobile Home Rent Stabilization Board ("Board"). The Board consists of five (5) members appointed by the City Council of the City of Carpinteria.

The primary function of the Board is to approve, set, and adjust the rent schedule and maximum rents for mobile home tenancies in the city in accordance with Chapter 5.69 of the Carpinteria Municipal Code ("Mobile Home Park Ordinance"). A mobile home park owner may contend that the maximum rent set by the Board does not provide a "just and reasonable return" and submit an application for rent adjustment. A resident residing in the park subject to the adjustment application may oppose the application. The Board must either conduct a hearing on the application itself or refer the matter to a hearing officer to conduct a hearing and to make a recommendation to the Board regarding the adjustment. After the hearing is concluded, the Board must render a final decision as to whether or not to grant the adjustment, in whole or in part.

An application for rent adjustment ("Vista Application") has been submitted to the Board by Vista de Santa Barbara Associates LLC ("Vista"), owner of the Vista de Santa Barbara mobile home park ("Park") located in the city. The Vista Application has been returned to Vista by the city as incomplete; no further proceedings will occur until Vista submits a revised petition with additional information requested by the city. It is anticipated, however, that Vista will resubmit the application, therefore requiring proceedings before the Board.

Mr. Hamer and his wife reside in the Park. The Mobile Home Park Ordinance specifically prohibits a member of the Board from participating in a hearing or decision concerning a mobile home park in which he resides. Accordingly, Mr. Hamer will not participate as a board member in the hearing or decision on the Vista Application.<sup>2</sup>

Mr. Hamer has stated that he and his wife may file with the Board written materials and appear before the Board regarding the Vista Application. Additionally, Mr. Hamer has advised you that he may be appointed by a group of residents residing in the Park to serve as a spokesperson on their behalf regarding the Vista Application before the Board.

### ANALYSIS

**1. Would Mr. Hamer violate the Act's prohibition against using or attempting to use his official position to influence a governmental decision should he and his wife file written materials and appear before the Mobile Home Rent Stabilization Board, or a hearing officer, regarding the Vista Application?**

You state that Mr. Hamer is automatically disqualified from participating in the hearing and the decision regarding the Vista Application by virtue of the Mobile Home Park Ordinance's prohibition against his participation in a decision concerning a mobile home park in which he resides. Therefore, your questions to us relate to his appearance as a private citizen to represent his personal interests in the Vista Application.

A public official is permitted to appear, as is any member of the general public, before an agency in the course of its prescribed governmental function, to represent himself or herself on matters related solely to his or her personal interests. (Regulations 18702.4(a)(2) and 18702.4(b)(1).)

"An official's 'personal interests' include, but are not limited to:

"(A) An interest in real property which is wholly owned by the official or members of his or her immediate family.

"(B) A business entity wholly owned by the official or members of his or her immediate family.

"(C) A business entity over which the official exercises sole direction and control, or over which the official and his or her spouse jointly exercise sole direction and control."  
(Regulation 18702.4(b)(1)(A)-(C).)

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<sup>2</sup> Be advised that the Commission only has jurisdiction to interpret the Act, and that this letter does not purport to interpret the Mobile Home Park Ordinance.

A public official who resides in a mobile home park under a lease agreement has an interest in real property. (Section 82033.) Therefore, a public official with a leasehold interest in a mobile home park may appear before a rent stabilization board to represent his or her own interest, if the provisions of Regulation 18702.4(b) apply. (*Flitner* Advice Letter, No. I-92-065.) Mr. Hamer would not violate any provisions of the Act by doing so.

**2. Would Mr. Hamer violate the Act's prohibition against using or attempting to use his official position to influence a governmental decision should he appear before the Board as a spokesperson on behalf of the Vista residents regarding the Vista Application?**

Yes. Regulation 18702.4 expressly provides that an official may appear before his or her agency as a member of the general public to represent himself or herself on matters related "solely to the official's personal interests." (Regulation 18702.4(a)(2).) There is no such provision for a public official's appearance before his or her agency as a spokesperson on behalf of any third party or parties. Consequently, the Commission has routinely advised public officials to "be careful . . . to avoid giving the impression that [they are] speaking in the interest of any person or group other than [themselves] and [their] immediate famil[ies], or that [they are] acting in any official capacity." (*Oderman* Advice Letter, No. A-00-082; *Harper* Advice Letter, No. A-96-298; *Empeo* Advice Letter, No. A-00-107.) Therefore, Mr. Hamer would be violating the Act's prohibition against using or attempting to use his official position to influence a governmental decision should he appear before the Board as a spokesman on behalf of the Vista residents regarding the Vista Application.

**3. Would Mr. Hamer violate the Act's prohibition against using or attempting to use his official position to influence a governmental decision should he, as an individual or as a spokesperson on behalf of the Vista residents, engage in other activities regarding the Vista Application, such as preparing oral and written statements to the media, soliciting support for the residents' position from other groups, and contacting members of the Board regarding the Vista Application?**

The definition of "influence," as that term is used in the Act, expressly excludes "[c]ommunicat[ions] with the general public or the press." (Regulation 18702.4(b)(2).) Therefore, as an individual, Mr. Hamer may engage in these activities, being very careful to avoid the appearance of acting in the interests of the residents, as a group, or in his official capacity. He may not act as a spokesperson for the Vista residents with third parties, including members of the media.

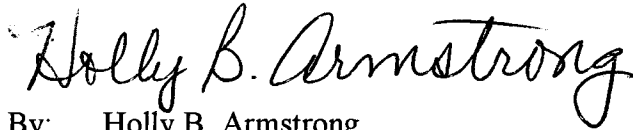
With respect to contacting members of the Board concerning the Vista Application, Regulation 18702.4 provides an exception to the rule prohibiting a public official from otherwise appearing before his agency to influence a decision with which he has a conflict of interest. As such, this regulation is subject to the traditional rules of statutory construction that exemptions be construed narrowly. Regulation 18702.4 makes clear that an official may make "appearances" as a member of the general public "before

an agency in the course of its prescribed governmental function to represent himself or herself on matters related solely to his or her personal interests.” (Regulation 18702.4(a)(2) and 18702.4(b)(1).) The regulation provides no other circumstances where the exception applies. Thus, while Mr. Hamer may *appear* before the Board when it is constituted as such at a public hearing as any other member of the general public to represent his personal interests, he may not attempt to contact the individual members of the Board for purposes of influencing their decision regarding the Vista Application. (*Oderman* Advice Letter, No. A-00-082.)

If you have any other questions regarding this matter, please contact me at (916) 322-5660.

Sincerely,

Luisa Menchaca  
General Counsel

A handwritten signature in cursive script that reads "Holly B. Armstrong".

By: Holly B. Armstrong  
Staff Counsel, Legal Division

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