

**From:** "Wheaton, Nicole" <nicole.wheaton@sfgov.org>  
**To:** "St.Croix, John" <john.st.croix@sfgov.org>  
**Cc:** "Ng, Mabel" <mabel.ng@sfgov.org>

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**Date:** Monday, April 08, 2013 04:49PM  
**Subject:** Waiver Request

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John and Mabel,

Please find two letters – one from the Mayor, and the other from Commissioner Pearlman, requesting that the Ethics Commission waive SFCGC Code, Section 3.224.

Please contact me with any questions you may have, and thank you again for your assistance with this matter.

Nicole

Nicole A. Wheaton  
Director of Appointments  
Commission & Board Liaison  
Office of Mayor Edwin M. Lee  
(415) 554-7940

Attachments:

Ethics Commission Waiver Letter -  
040813.pdf

Ethics Commission Waiver Letter -  
040213.pdf



April 2, 2013

San Francisco Ethics Commission  
25 Van Ness Avenue, #220  
San Francisco, CA 94102

Re: San Francisco Municipal Code, Section 3.224 - Prohibition on Representing Private Parties Before Other City Officers and Employees – Compensated Advocacy

Dear Commissioners,

I have been recently appointed to the Historic Preservation Commission. For this commission, there are specific requirements for knowledge and experience in the history of architecture. As an architect based in San Francisco, I have been in private practice since 1995. My firm's work includes the design and preparation of construction documents for residential and commercial projects some of which require approvals at both the Planning and Historic Preservation Commissions. For most of my current and future work, I can have either an employee or project counsel present these projects to these governmental bodies. Of course, for any project that is presented to the Historic Preservation Commission, I will recuse myself from the proceedings.

I have been working on the renovation of the Alexandria Theater on Geary Boulevard since 2010. The project was reviewed by the HPC in 2011, but now requires a hearing at the Planning Commission to be scheduled in late April or May 2013. Since I am the lead on the project and there are no other representatives who know and understand this complex project, I will need to represent my client for this hearing.

In addition to appearances at the Planning Commission, I need to continue to submit my work for approvals of both the Planning Department and Department of Building Inspection. Therefore, I am requesting a waiver to the Compensated Advocacy prohibition in the Municipal Code (Ethics Commission Regulation 3.224.2) to be able to serve the City of San Francisco in my capacity as the architectural historian on the Historic Preservation Commission as well as to continue to maintain my livelihood. As a small business owner, I would have to forego my public service if a waiver cannot be granted. I hope this will not be the case.

Thank you for your consideration of this request.

Sincerely,

A handwritten signature in black ink, appearing to read "Jonathan Pearlman", written in a cursive style.

Jonathan Pearlman



April 8, 2013

San Francisco Ethics Commission  
25 Van Ness Avenue, #220  
San Francisco, CA 94102

Re: San Francisco Campaign and Governmental Conduct Code, Section 3.224 – Prohibition on Representing Private Parties Before Other City Officers and Employees – Compensated Advocacy

Dear Commissioners,

On February 26, 2013, I nominated Jonathan Pearlman to serve as a member of the Historic Preservation Commission.

The Historic Preservation Commission was created in 2008 with the passage of Proposition J. It is made up of seven members, six of whom must meet very specific professional qualifications related to architecture and historic preservation in order to be appointed. *See* S.F. Charter Section 4.135.

I nominated Mr. Pearlman for Seat 3, a seat that requires that the appointee meet the Secretary of Interior's Professional Qualification Standards for an Architectural Historian. Specifically, these requirements are the following:

*The minimum professional qualifications in architectural history are a graduate degree in architectural history, art history, historic preservation, or closely related field, with coursework in American architectural history, or a bachelor's degree in architectural history, art history, historic preservation or closely related field plus one of the following:*

- 1. At least two years of full-time experience in research, writing, or teaching in American architectural history or restoration architecture with an academic institution, historical organization or agency, museum, or other professional institution; or*
- 2. Substantial contribution through research and publication to the body of scholarly knowledge in the field of American architectural history.*

On March 12, 2013, the Board of Supervisors unanimously voted in support of Mr. Pearlman's nomination, confirming his appointment to the Historic Preservation Commission.

**Background on Jonathan's firm:**

Elevation Architects was created in 1995 by Jonathan and his domestic partner Alan. Both Jonathan and Alan own the corporation – Jonathan serves as the Design Principal and Alan

serves as the Managing Principal, handling the finances for the business as well as managing the interior design aspects of the firm's projects. Alan and Jonathan employ one full-time registered architect, Kip Coleman, and one part-time administrative assistant, Robin Kwartz.

Elevation Architects works on projects large and small throughout San Francisco, boasting a large list of successful and on-going renovations of some of our City's prized historic commercial and institutional buildings - Self Help for the Elderly's Adult Day Health Center (Chinatown's Nam Yuen Building), the Hibernia Bank, and the Alexandria Theater - as well as renovations and additions to residential buildings that are historic resources.

Due to the nature of Jonathan's work, there have been times where Elevation Architects' projects have gone before commissions for review, comment, and rarely, action. For example, over the past five years, Elevation Architects has had the following projects before a City board or commission:

Projects before Commissions for Review/Action/Information over the last five years:

- January 19, 2011: HPC for 5400 Geary Boulevard (Alexandria Theater): Review and Comment
- August 15, 2012: HPC for 1 Jones Street (Hibernia): Review and Comment
- December 4, 2008: Joint hearing of Planning Commission and Recreation & Park Commission for 740 Washington Street (Senior Center for Self Help for the Elderly) - allowance of increase in shadow at Portsmouth Square
- December 5, 2012: Historic Preservation Commission for 1 Jones Street: Certificate of Appropriateness

Currently, Elevation Architects has the following projects tentatively scheduled to appear before the Planning Commission:

- April 25, 2013: Planning Commission for 5400 Geary Blvd: Conditional Use and approval of PUD
- Summer 2013: Planning Commission for 1001 17th/140 Pennsylvania (37 unit condo building): Conditional Use approval

**Campaign and Governmental Conduct Code ("C&GC Code") Section 3.224**

C&GC Code Section 3.224(a) prohibits any officer of the City and County from directly or indirectly receiving "any form of compensation to communicate orally, in writing, or in any other manner on behalf of any other person with any other officer or employee of the City and County with the intent to influence a government decision."

However, C&GC Code Section 3.224(c) allows the Ethics Commissions to waive this prohibition for any officer who, by law, must be appointed to represent any profession, trade, business, union or association.

I respectfully request that the Ethics Commission waive this prohibition for Mr. Pearlman, and I would argue that this waiver would be acceptable to and beneficial for the City for the following reasons:

### **Arguments in Support of the Waiver**

When the Charter places such specific restrictions on a seat, as it does for Historic Preservation, there are often only a few people in the City whose background and experience make them qualified, and who have the interest and time to serve. In fact, after robust outreach, we eventually found a small number of people who possessed the qualifications and willingness to serve on such a public body, and who could make the time commitment that it entails. Mr. Pearlman was far and away the best candidate of the group.

Mr. Pearlman is an elector of the City; moreover, his firm is one of the thousands of San Francisco small businesses that focus their energies on bettering the City in which they are based. Due to Mr. Pearlman's extensive applied experience rehabilitating commercial and residential buildings in San Francisco, he possesses a deep understanding of preservation impacts on our communities, both positive and negative. It is my strong belief that his understanding of these impacts, as well as his breadth of perspective related to preservation, will add immensely to the Commission's dialogue as it continues to advise the City on historic preservation matters.

I was also drawn to Mr. Pearlman's proven desire to bring architectural history to San Franciscans in a way that elevates the discourse around preservation and helps the public understand preservation's context. He has exemplified this desire in his service as the program coordinator of a volunteer driven organization in Los Altos that was created to save, move, and rehabilitate a Richard Neutra house built in 1939. In order to raise funds for this endeavor, the organization created numerous educational programs about 20th century American and California architecture, landscape and design through speaker and film series. The creation of their first "design camp," – a camp that will introduce 8th and 9th graders to the discipline of historic preservation – is an idea from which so many of San Francisco's youth could benefit, and a perfect example of new and diverse ways to educate our populace.

Mr. Pearlman has a clear ability to be a bridge to the public, helping to translate the formal way of defining architectural history to one that is applied, in an effort to help turn the fear that many San Franciscans have of owning a historic resource into a sense of pride. It should be our City's goal to address San Francisco history in a way that neither diminishes that history nor denies the need of citizens today and in the future. I know Jonathan shares that sentiment, and I am confident that with his participation, citizens will increasingly appreciate the retention and preservation of some of our most historic gems, while our City continues to grow and prosper.

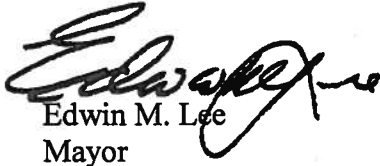
Our City's laws were not established with the intent of denying small business owners the ability to participate in a meaningful way on issues that affect them and of which they are intimately familiar. Small business owners are immensely qualified and are also very deserving of an official role in our public discourse. Mr. Pearlman should not be disqualified from serving simply because of his ownership of a small firm. If the waiver is denied, Mr. Pearlman would be required to choose between service on the Commission or foregoing his livelihood. If he chooses the former, the City will have lost the services of someone who has astute knowledge of our City's history and a profound appreciation of the significance of preservation efforts upon our diverse populations.

Mr. Pearlman's background, his understanding for and appreciation of the diverse communities that make up the citizenry of San Francisco, his civic engagement, and his work on numerous sites throughout the City, both high profile and commonplace, will enhance and benefit the

makeup of the Historic Preservation Commission and will greatly benefit our City. It is for these reasons that I respectfully request that the Ethics Commission grant him this waiver.

Thank you for your consideration of this request.

Sincerely,



Edwin M. Lee  
Mayor

## SEC. 4.135. HISTORIC PRESERVATION COMMISSION.

GENERAL. There is hereby created a Historic Preservation Commission, which shall advise the City on historic preservation matters, participate in processes that involve historic or cultural resources, and take such other actions concerning historic preservation as may be prescribed by ordinance. The Historic Preservation Commission shall consist of seven members nominated by the Mayor and subject to approval by a majority of the Board of Supervisors.

The term and tenure of all members sitting on the Landmarks Preservation Advisory Board, created under Article 10 of the Planning Code, as of the effective date of this section shall terminate on December 31, 2008. Of the original appointments to the Historic Preservation Commission, four shall be for a four-year term and three for a two-year term as follows; the odd-numbered seats shall be for four-year terms and the even-numbered seats shall be for two-year terms. After the expiration of the original terms, all appointments shall be for four-year terms, provided however, that a member may holdover until a successor has been nominated by the Mayor and approved by the Board of Supervisors. There shall be no limit on the number of terms a member may serve.

The original nominations shall be made no later than 31 days after the date of the election creating this section. If the Mayor fails to nominate an original appointment within said period, the nomination for the original appointment may be made by the President of the Board of Supervisors, subject to the approval of a majority of the Board of Supervisors.

Within 60 days of the expiration of a term or other vacancy the Mayor shall nominate a qualified person to fill the vacant seat for the term, or the remainder of the term, subject to approval by a majority of the Board of Supervisors who shall hold a public hearing and vote on the nomination within 60 days of the Mayor's transmittal of the nomination to the Clerk of the Board of Supervisors. If the Mayor fails to make such nomination within 60 days, the nomination may be made by the President of the Board of Supervisors, subject to the approval of a majority of the Board of Supervisors. The appointment shall become effective on the date the Board of Supervisors adopts a motion approving the nomination or after 60 days from the date the Mayor transmits the nomination to the Clerk of the Board of Supervisors if the Board of Supervisors fails to act.

Members may be removed by the appointing officer only pursuant to Section 15.105.

QUALIFICATIONS. In addition to the specific requirements set forth below, members of the Historic Preservation Commission shall be persons specially qualified by reason of interest, competence, knowledge, training and experience in the historic, architectural, aesthetic, and cultural traditions of the City, interested in the preservation of its historic structures, sites and areas, and residents of the City. Six of the members of the Historic Preservation Commission shall be specifically qualified in the following fields:

1. Seats 1 and 2: licensed architects meeting the Secretary of the Interior's Professional Qualifications Standards for historic architecture;
2. Seat 3: an architectural historian meeting the Secretary of the Interior's Professional Qualifications Standards for architectural history with specialized training and/or demonstrable experience in North American or Bay Area architectural history;

3. Seat 4: an historian meeting the Secretary of the Interior's Professional Qualifications Standards for history with specialized training and/or demonstrable experience in North American or Bay Area history;

4. Seat 5: an historic preservation professional or professional in a field such as law, land use, community planning or urban design with specialized training and/or demonstrable experience in historic preservation or historic preservation planning.

5. Seat 6 shall be specially qualified in one of the following fields or in one of the fields set forth for Seats 1, 2, or 3;

a. A professional archeologist meeting the Secretary of the Interior's Professional Qualification Standards for Archeology;

b. A real estate professional or contractor who has demonstrated a special interest, competence, experience, and knowledge in historic preservation;

c. A licensed structural engineer with at least four years of experience in seismic and structural engineering principals applied to historic structures; or

d. A person with training and professional experience with materials conservation.

Seat 7 shall be an at large seat subject to the minimum qualifications set forth above.

**LANDMARK AND HISTORIC DISTRICT DESIGNATIONS.** The Historic Preservation Commission shall have the authority to recommend approval, disapproval, or modification of landmark designations and historic district designations under the Planning Code to the Board of Supervisors. The Historic Preservation Commission shall send recommendations regarding landmarks designations to the Board of Supervisors without referral or recommendation of the Planning Commission. The Historic Preservation Commission shall refer recommendations regarding historic district designations to the Planning Commission, which shall have 45 days to review and comment on the proposed designation, which comments, if any, shall be forwarded to the Board of Supervisors together with the Historic Preservation Commission's recommendation. Decisions of the Historic Preservation Commission to disapprove designation of a landmark or historic district shall be final unless appealed to the Board of Supervisors.

**CERTIFICATES OF APPROPRIATENESS.** The Historic Preservation Commission shall approve, disapprove, or modify certificates of appropriateness for work to designated landmarks or within historic districts. For minor alterations, the Historic Preservation Commission may delegate this function to staff, whose decision may be appealed to the Historic Preservation Commission.

For projects that require multiple planning approvals, the Historic Preservation Commission must review and act on any Certificate of Appropriateness before any other planning approval action. For projects that (1) require a conditional use permit or permit review under Section 309, et seq., of the Planning Code and (2) do not concern an individually landmarked property, the Planning Commission may modify any decision on a Certificate of Appropriateness by a 2/3 vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code.

For projects that are located on vacant lots, the Planning Commission may modify any decision on a Certificate of Appropriateness by a two-thirds vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code.



The Historic Preservation Commission or Planning Commission's decision on a Certificate of Appropriateness shall be final unless appealed to the Board of Appeals, which may modify the decision by a 4/5 vote; provided, however, that if the project requires Board of Supervisors approval or is appealed to the Board of Supervisors as a conditional use, the decision shall not be appealable to the Board of Appeals, but rather to the Board of Supervisors, which may modify the decision by a majority vote.

**SIGNIFICANT OR CONTRIBUTORY BUILDING AND CONSERVATION DISTRICT DESIGNATIONS IN THE C-3 DISTRICTS.** The Historic Preservation Commission shall have the authority to recommend approval, disapproval, or modification of Significant or Contributory building and Conservation District designations under the Planning Code to the Board of Supervisors. The Historic Preservation Commission shall send recommendations regarding Significant or Contributory Buildings to the Board of Supervisors without referral or recommendation of the Planning Commission. The Historic Preservation Commission shall refer recommendations regarding Conservation District designations to the Planning Commission, which shall have 45 days to review and comment on the proposed designation, which comments, if any, shall be forwarded to the Board of Supervisors together with the Historic Preservation Commission's recommendation. Decisions of the Historic Preservation Commission to disapprove designation of a Significant or Contributory building or Conservation District shall be final unless appealed to the Board of Supervisors.

**ALTERATION OF SIGNIFICANT OR CONTRIBUTORY BUILDINGS OR BUILDINGS IN CONSERVATION DISTRICTS IN THE C-3 DISTRICTS.** The Historic Preservation Commission shall have the authority to determine if a proposed alteration is a Major Alteration or a Minor Alteration. The Historic Preservation Commission shall have the authority to approve, disapprove, or modify applications for permits to alter or demolish designated Significant or Contributory buildings or buildings within Conservation Districts. For Minor Alterations, the Historic Preservation Commission may delegate this function to staff, whose decision may be appealed to the Historic Preservation Commission.

For projects that require multiple planning approvals, the Historic Preservation Commission must review and act on any permit to alter before any other planning approval action. For projects that (1) require a conditional use permit or permit review under Section 309, et seq., of the Planning Code and (2) do not concern a designated Significant (Categories I and II) or Contributory (Category III only) building, the Planning Commission may modify any decision on a permit to alter by a 2/3 vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code.

For projects that are located on vacant lots, the Planning Commission may modify any decision on a permit to alter by a two-thirds vote, provided that the Planning Commission shall apply all applicable historic resources provisions of the Planning Code.

The Historic Preservation Commission's or Planning Commission's decision on a permit to alter shall be final unless appealed to the Board of Appeals, which may modify the decision by a 4/5 vote; provided, however, that if the project requires Board of Supervisors approval or is appealed to the Board of Supervisors as a conditional use, the decision shall not be appealable to the Board of Appeals, but rather to the Board of Supervisors, which may modify the decision by a majority vote.

**MILLS ACT CONTRACTS.** The Historic Preservation Commission shall have the authority to recommend approval, disapproval, or modification of historical property contracts to the Board of Supervisors, without referral or recommendation of the Planning Commission.

**PRESERVATION ELEMENT OF THE GENERAL PLAN.** The Historic Preservation Commission shall recommend to the Planning Commission a Preservation Element of the General Plan and shall periodically recommend to the Planning Commission proposed amendments to such Preservation Element of the General Plan. Other objectives, policies, and provisions of the General Plan and special area, neighborhood, and other plans designed to carry out the General Plan, and proposed amendments thereto, that are not contained within such Preservation Element but that concern historic preservation shall be referred to the Historic Preservation Commission for its comment and recommendations prior to action by the Planning Commission. When the Planning Commission recommends to the Board of Supervisors for approval or rejection proposed amendments to the General Plan that concern historic preservation, any recommendation or comments of the Historic Preservation Commission on such proposed amendments shall be forwarded to the Board of Supervisors for its information.

**REFERRAL OF CERTAIN MATTERS.** The following matters shall, prior to passage by the Board of Supervisors, be submitted for written report by the Historic Preservation Commission regarding effects upon historic or cultural resources: ordinances and resolutions concerning historic preservation issues and historic resources; redevelopment project plans; waterfront land use and project plans; and such other matters as may be prescribed by ordinance. If the Planning Commission is required to take action on the matter, the Historic Preservation Commission shall submit any report to the Planning Commission as well as to the Board of Supervisors; otherwise, the Historic Preservation Commission shall submit any report to the Board of Supervisors.

**OTHER DUTIES.** For proposed projects that may have an impact on historic or cultural resources, the Historic Preservation Commission shall have the authority to review and comment upon environmental documents under the California Environmental Quality Act and the National Environmental Policy Act. The Historic Preservation Commission shall act as the City's local historic preservation review commission for the purposes of the Certified Local Government Program, may recommend properties for inclusion in the National Register of Historic Places, and may review and comment on federal undertakings where authorized under the National Historic Preservation Act. The Historic Preservation Commission shall review and comment upon any agreements proposed under the National Historic Preservation Act where the City is a signatory prior to any approval action on such agreement. The Historic Preservation Commission shall have the authority to oversee and direct the survey and inventory of historic properties.

Once a quorum of members of the Historic Preservation Commission has been originally appointed and approved, the Historic Preservation Commission shall assume any powers and duties assigned to the Landmarks Preservation Advisory Board until the Municipal Code has been amended to reflect the creation of the Historic Preservation Commission.

**BUDGET, FEES, DEPARTMENT HEAD, AND STAFF.** The provisions of Charter subsections 4.102(3), 4.102(4), 4.102(5), and 4.102(6) shall not apply to the Historic Preservation Commission. The Historic Preservation Commission may review and make recommendations on the Planning Department budget and on any rates, fees, and similar charges with respect to appropriate items coming within the Historic Preservation Commission's jurisdiction to the department head of the Planning Department or the Planning Commission. The department head of the Planning Department shall assume the powers and duties that would otherwise be executed by an Historic Preservation Commission department head. The Planning Department shall render staff assistance to the Historic Preservation Commission.

(Added by Proposition J, 11/4/2008)