

ETHICS COMMISSION

CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: March 2, 2010
To: Members, Ethics Commission
From: John St. Croix, Executive Director
By: Mabel Ng, Deputy Executive Director
Re: Request for Waiver from Compensated Advocacy Ban and One-Year Post-employment Communications Restriction

Zachary Nathan, an architect who was appointed in December 2009 to serve as a member of the Access Appeals Commission (“AAC”), has requested a waiver from section 3.224 of the San Francisco Campaign and Governmental Conduct Code (“C&GC Code”) so that he may engage in compensated advocacy on behalf of other persons before a City officer or employee. In the event that Mr. Nathan must resign from his service on the AAC, he has also requested a waiver from the one-year post-employment communications restriction under C&GC Code section 3.234(a)(2). The Ethics Commission has calendared Mr. Nathan’s requests for consideration at its meeting on March 8, 2010. As discussed below, staff does not believe that section 3.224, as currently written, permits the Commission to consider a waiver request by Mr. Nathan. However, staff recommends that the Commission grant his request for waiver from the one-year post-employment ban.

A. Waiver from Compensated Advocacy Ban

San Francisco Building Code section 105A.3.2.1 requires that the seat occupied by Mr. Nathan be filled by someone who is a “public member.” The Building Code does not define “public member.” Webster’s New College Dictionary defines “public” as “of, belonging to, or concerning the people as a whole; of or by the community at large,” and staff understands that the Building Inspection Commission appoints individuals to that seat on the AAC without requiring that the appointee represent any particular profession, trade, business, union or association.

C&GC Code section 3.224(c) states that the Commission may waive the compensated advocacy ban for any officer who, by law, must be appointed to represent any profession, trade, business, union or association. Despite the fact that Mr. Nathan may have expertise in relevant areas, the person in the seat he holds on the AAC is not required to represent any profession, trade, business, union or association, and is not required to be experienced in construction or any other relevant field. Because he does not meet the eligibility criteria for a waiver, staff concludes that he is not eligible to

seek a waiver from the compensated advocacy ban under current law. Therefore, staff concludes that the Commission should not consider Mr. Nathan's waiver request.

Based on staff's conversations with Mr. Nathan and the staff of the Building Inspection Commission that is charged with recruiting AAC members, staff recommends that the Commission consider amending section 3.224(c) to allow any person who serves on a board or commission to request a waiver from the compensated advocacy ban, so long as there is demonstrated need for service by such individuals on those boards or commissions. Details regarding this proposal can be found in staff's memo accompanying the proposed amendments (item VII on the Commission's agenda).

B. Waiver from One-Year Post-Employment Communications Ban

In anticipation of the denial of his compensated advocacy waiver request, Mr. Nathan intends to resign from the AAC. Once he resigns, he will be subject to the City's post-employment restrictions, including the one-year prohibition on lobbying one's former department, commission or unit of government. In a request for formal written advice, Mr. Nathan sought clarification about the applicability of the one-year post-employment restriction to members of the AAC – namely, whether the restriction would prohibit him from advocating before the entire Department of Building Inspection (DBI) or just before the AAC. At its March 8, 2010 meeting, the Commission will consider a draft advice letter, which concludes that an AAC commissioner's "unit of government" for purposes of the one-year ban is the DBI rather than the AAC. Should the Commission agree that the applicable unit of government is the DBI, Mr. Nathan has requested a waiver of the post-employment restriction.

C&GC Code section 3.234(a)(2) provides:

2) One-Year Restriction on Communicating with Former Department.

(A) No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall, with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

This revolving door provision is one of the City's post-employment laws, which were enacted to protect the integrity of government decision-making by preventing a City officer or employee from using his or her influence or knowledge, gained as a public servant, to advance private interests at the expense of the public. Section 3.234(a)(2) accomplishes this goal by providing for a one-year "cooling-off" period during which a former officer or employee is prohibited from communicating with his or her former colleagues on behalf of another to influence governmental decisions.

Because there may be circumstances when the application of the post-employment provisions is not appropriate necessary to protect the integrity of government decision-making, C&GC Code

section 3.234 permits the Commission to grant a waiver from the post-employment restrictions if the Commission determines that granting a waiver would not create the potential for undue influence or unfair advantage. *See* C&GCC § 3.234(c).

The Commission may grant Mr. Nathan's waiver request only if the Commission determines that granting the waiver would not create the potential for undue influence or unfair advantage. *See id.* In making the determination, the Commission may consider: (1) the nature and scope of the communications the former officer or employee will have with his or her former department, board, commission, office or unit of government; (2) the subject matter of such communications; (3) the former position held by the officer or employee; (4) the type of inside knowledge that the former officer or employee may possess; and (5) any other factors the Commission deems relevant. *See* Ethics Regulation 3.234-4(4).

As indicated in his letter, Mr. Nathan is a sole proprietor of a two-person architectural business in the City; he has one not-yet licensed draftsman who serves as an intern. In order to practice his profession, he must meet personally with staff at the DBI, as well as other City agencies, in order to discuss his projects. As an architect, Mr. Nathan presents drawings related to projects to DBI and other agencies and communicates with employees of those agencies regarding compliance with applicable codes. Seventy percent or more of Mr. Nathan's business involves projects under the jurisdiction of DBI.

Mr. Nathan was appointed to serve on the AAC in December 2009. If he retires from the AAC after the Commission's March 2010 meeting, he will have served approximately three months, a duration of service that is unlikely to create the potential for undue influence or unfair advantage. As noted in the letter to the Ethics Commission from Rick Halloran, the Secretary to the AAC, the AAC "is a relatively small commission that hears accessibility issues on a case by case basis and generally has no influence on law or policy. The commissioners' positions are not highly visible." Mr. Nathan notes that he does not seek a waiver from communications with the AAC, the commission on which he actually served and over which he likely holds influence. But, as discussed in the advice letter, Mr. Nathan's "unit of government" for purposes of the post-employment ban is the DBI. So Mr. Nathan seeks a waiver to allow him to meet with DBI employees as an architect on behalf of his clients during the year following his resignation. Because Mr. Nathan's interactions with the DBI over the years have been those of an architect meeting with DBI employees to explain his drawings, and he has had only minimal contact with DBI employees in his role as an AAC commissioner, it is not likely that Mr. Nathan would have any unusual influence over DBI employees as a result of his service on the AAC. Thus, staff believes that the possibility of favoritism or undue influence would be minimal.

For these reasons, staff recommends that the Commission grant Mr. Nathan's request for waiver from the one-year post-employment ban so that he may pursue his vocation when he resigns from the AAC.

ZACHARY
NATHAN
ARCHITECT

◆
1108-C BRYANT STREET
SAN FRANCISCO, CA 94103-4305
VOICE 415-701-0877
FAX 415-252-7649
EMAIL nathanarch@earthlink.net

2010 FEB 18 PM 12:25
SAN FRANCISCO
ETHICS COMMISSION
BY _____

February 15, 2010

Mabel Ng
Deputy Executive Director
Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Re: Post Employment and Post Service Compensated Advocacy Waiver

I would like to formally request written advice and a waiver for post employment/ service restrictions on communicating with a former department from the San Francisco Ethics Commission. I am one of 5 members of the Access Appeals Commission (AAC) and was appointed by the San Francisco Building Inspection Commission. I was not aware of restrictions on compensated advocacy when I was appointed to the AAC in December 2009. Since it appears that the Ethics Commission will deny my waiver request for compensated advocacy which I requested in my correspondence to you dated January 21, 2010, I would like a clarification of the one year post employment restrictions of Section 3.234 of the San Francisco Campaign and Government Conduct Code. Paragraph (C)(2) of section 3.234 reads as follows:

No current or former officer or employee of the City and County, for one year after termination of his or her service or employment with any department, board, commission, office or other unit of the City, shall with the intent to influence a government decision, communicate orally, in writing, or in any other manner on behalf of any other person (except the City and County) with any officer or employee of the department, board, commission, office or other unit of government, for which the officer or employee served.

Does this restriction apply broadly to the entire Department of Building Inspection or more narrowly to only the Access Appeals Commission of which I am a member? If it only restricts my communications with the Access Appeals Commission, then I do not require a waiver. On the other hand, if it applies to all communications with anyone in the Department of Building Inspection, then I would need a waiver.

As I have previously described in my correspondence to you dated January 21, 2010, I am a sole proprietor of a two person architectural business in the City. I have one draftsman that is serving an internship and is not yet a licensed California architect.

It would be a hardship for me to not be able to practice my vocation. In order to perform my architectural responsibilities, I need to personally meet with staff at the Planning De-

Mabel Ng
Ethics Commission
Page 2
February 15, 2010

partment, Building Department, Fire Department, Public Works and other City agencies involved in the review of permit applications. Last year, approximately 70% of my business was for San Francisco projects that required a building permit from the City and approximately 76% in the year prior. I apply for approximately 5 to 10 building permits per year with the San Francisco Department of Building Inspection for projects that our firm is serving in the role of the project architect where we would typically prepare plans. In my role as an architect, I present drawings related to permit applications to City agencies for review to assure compliance with codes.

Thank you for your consideration of my waiver request so that I can continue to practice my vocation when I leave the Access Appeals Commission.

Sincerely,

A handwritten signature in black ink, appearing to read "Zachary Nathan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Zachary Nathan, AIA

cc. Richard Halloran, Secretary to the Access Appeals Commission

JAN-21-2010 02:22P FROM:

415-252-7649

TO:2523112

P.2

**ZACHARY
NATHAN
ARCHITECT**



1108-C BRYANT STREET
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January 21, 2010

Mabel Ng
Deputy Executive Director
Ethics Commission
25 Van Ness Avenue, Suite 220
San Francisco, CA 94102-6053

Re: Compensated Advocacy Waiver for Access Appeals Commission Member

I would like to formally request a written waiver and guidance from the San Francisco Ethics Commission. The San Francisco Building Inspection Commission appointed me to the Access Appeals Commission (AAC) at its meeting on December 16, 2009. It was recently brought to my attention that I may need to be in compliance with Section 3.224 of the San Francisco Campaign and Government Conduct Code which prohibits officers from representing private parties before other city officers and employees and is also referred to as compensated advocacy. This requirement was not known to me when I applied for the position or when I was appointed.

It is my understanding that the Ethics Commission is empowered to grant waivers from the Campaign and Government Conduct Code that takes into account the ability of the City to recruit qualified individuals to fill the position in question and the ability of the person in question to engage in his or her particular vocation if the waiver is not granted.

1) The Access Appeals Commission

Building Code Section 105A.3.2.1 describes the qualifications and membership of the Access Appeals Commission. Two members are to be persons with a disability, two members are to be experienced with construction and one member shall be a public member. The Building Inspection Commission appointed me to the "public seat".

The Access Appeals Commission conducts hearings on written appeals related to disabled access. The AAC does not supervise or manage Department of Building Inspection (DBI) staff. Unlike the Building Inspection Commission which oversees the entire Department, the AAC is a very specialized commission with limited duties and responsibilities.

2) The available pool of candidates and the selection process.

According to Ann Aherne, Secretary to the Building Inspection Commission, announcements of the vacant positions on the AAC were sent via email to approximately 600-700 persons culled from various DBI lists. In addition, commission members did outreach to

JAN-21-2010 02:22P FROM:

415-252-7649

TO:2523112

P.3

Mabel Ng
Ethics Commission
Page 2
01/21/10

individuals, it was advertised on the DBI website and posted as required. A total of 12 applications were received for 3 vacant AAC positions. 6 people applied for the position of the "public seat". A subcommittee of the Building Inspection Commission reviewed the applications and made a recommendation to the full Commission. The BIC voted unanimously to approve my appointment and I was sworn in at the same meeting. Among the other 5 candidates for the "public seat" were several contractors, permit expeditors and code consultants who would also need to represent private parties before other city officers and employees.

3) My qualification for the Access Appeals Commission

I am a California licensed architect with over 30 years of experience on a wide range of building types and with special expertise in disabled access. The California Division of the State Architect has certified me as a certified access specialist – Certification No. CASp-076. Currently fewer than 200 people in the state have this credential.

I have advised public sector and private sector clients on how to meet disabled access requirements. Disabled access represents approximately 30 to 50% of our work. When I applied for the position, I was advised that the AAC needs people such as myself with a breadth of problem solving experience specifically related to disabled access because the cases that come before the AAC are often complex and difficult to resolve.

As a small business owner, I have familiarity with the issues faced by small business in complying with regulations.

I consider myself a dedicated member of the community who has lived in San Francisco for 33 years, owned a home and participated with many local organizations. Therefore, I am qualified to represent the citizens of San Francisco as the public member of the AAC.

4) The nature of my business

I am a sole proprietor of a two person architectural business in the City. Our architectural firm is certified by the San Francisco Human Rights Commission as a local business enterprise (LBE). I have one draftsman that is serving an internship and is not yet a licensed California architect.

It would be a hardship for me to not be able to practice my vocation. In order to perform my architectural responsibilities, I need to personally meet with staff at the Planning Department, Building Department, Fire Department, Public Works and other City agencies involved in the review of permit applications. Last year, approximately 70% of my business was for San Francisco projects that required a building permit from the City and approximately 76% in the year prior. I apply for approximately 5 to 10 building permits per year with the San Francisco Department of Building Inspection for projects that our firm is serving in the role of the project architect where we would typically prepare plans. In my role as an architect, I present drawings related to permit applications to City agencies for review to assure compliance with codes. I do not apply for permits as an expediter where others have prepared plans and we are not the project architect. My clients

JAN-21-2010 02:22P FROM:

415-252-7649

TO: 2523112

P. 4

Mabel Ng
Ethics Commission
Page 3
01/21/10

in San Francisco are typically small business owners, non-profit organizations, or small property owners.

I have not advocated on behalf of a client before any City of San Francisco commission meeting for several years.

I do not represent organized groups that influence policies at City agencies.

5) Influence on Government Decisions

I will not use my position to influence government decisions on behalf of my clients. It has been my experience that staff at DBI does not let appointees to various boards and commissions influence their decisions and pays very little attention to who is on what commission or committee. As a condition of my waiver, I suggest review of my plans by a Chief Building Inspector and I am willing to consider other restrictions. The AAC is too obscure for its members to be known at other City Agencies such as City Planning or the Fire Department.

Thank you for your consideration of my waiver request so that I can continue to serve on the Access Appeals Commission.

Sincerely,



Zachary Nathan, AIA

cc. Richard Halloran, Secretary to the Access Appeals Commission

City and County of San Francisco
Department of Building Inspection



Gavin Newsom, Mayor
FILED Vivian L. Day, C.B.O. Director

10 JAN 22 AM 10:32

SAN FRANCISCO
ETHICS COMMISSION

January 19, 2010

Mabel Ng
Deputy Executive Director
San Francisco Ethics Commission
25 Van Ness Avenue Suite 220
San Francisco, CA 94102

BY _____

Dear Ms Ng:

As Secretary to The Access Appeals Commission, I am writing this letter on behalf of Mr. Zachary Nathan to ask that the Ethics Commission grant Mr. Nathan a waiver from section 3224 for the following reasons:

The Access Appeals Commission is a relatively small commission that hears accessibility appeals on a case by case basis and generally has no influence on law or policy. The commissioners' positions are not highly visible.

Over the last few years it has been difficult to find qualified applicants. In response to an exhaustive outreach by the Building Inspection Commission, this year we were fortunate in having additional applicants for this position; but I believe they are all professionally in the same position as Mr. Nathan and would require waivers as well. I believe Mr. Nathan was selected for both his knowledge and his standing in the disabled community.

As many cases that have traditionally come before the commission involve hardships for small businesses, it is extremely desirable to have a person with small business experience on the Commission.

As the cases heard by the Access Appeals Commission involve issues of accessibility, it is important that the commissioners have a basic understanding and sensitivity to the civil rights issues involved. Should the Commission decide not to grant this waiver, I believe it would become extremely difficult to attract informed, unbiased, civic minded applicants for this position.

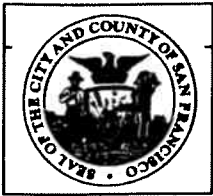
At the moment, we only have four appointed Commissioners, to lose Mr. Nathan would have a tremendously negative impact upon the Commission's ability to function and would adversely affect the ability of the appellants to obtain a fair decision.

Sincerely,

A handwritten signature in cursive script that reads "Rick Halloran".

Rick Halloran
Building Inspector
Secretary to the Access Appeals Commission

Cc: Zachary Nathane
ACC correspondence file
BIC



BUILDING INSPECTION COMMISSION (BIC)

Department of Building Inspection

Voice (415) 558-6164 - Fax (415) 558-6509

1660 Mission Street, San Francisco, California 94103-2414

January 23, 2010

**Gavin Newsom
Mayor**

COMMISSION

**Mel Murphy
President**

**Reuben Hechanova
Vice-President**

**Kevin Clinch
Frank Lee
Robin Levitt
Crisa Romero
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**Ann Aherne
Secretary**

**Sonya Harris
Asst. Secretary**

**Vivian L. Day
Director**

**Ms. Mabel Ng
Deputy Executive Director
Ethics Commission
25 Van Ness Avenue, Ste. 220
San Francisco, CA 94102**

Dear Ms. Ng:

The Building Inspection Commission recruits and appoints members to the Access Appeals Commission (AAC). The members of the AAC serve the City and County of San Francisco and the general public by hearing written appeals brought by any person regarding actions taken by the Department of Building Inspection in the enforcement of the requirements for Access to Public Accommodations by Physically Handicapped Persons (Part 5.5, Sections 19955-59 of the Health and Safety Code of the State of California), as well as action taken by the Department in the enforcement of the disabled access and adaptability provisions of this code (San Francisco Building Code Section 105.3).

The AAC consists of five Commissioners: two from the disabled community, two experienced in the construction industry, and one public member. It has been very difficult to recruit members of the public to serve on this very important Commission. Just this past October over 700 e-mails emails were sent to members of the public and various stakeholders in the disabled community and the construction industry inviting them to apply for three seats (two for persons with a disability and one for a member of the general public) that were expiring on the AAC. The information was posted on the DBI website and announced at the BIC meetings. Twelve applications were received which included the applications of the three members seeking reappointment. In the past approximately 3,000 letters were sent on two separate mailings with similar results.

As you can see, it is very difficult to obtain qualified, dedicated people to serve on this very important Commission. Another important qualification is that applicants must be residents of San Francisco; this greatly limits our pool of applicants. The BIC Commissioners take these appointments very seriously and asks that the Ethics Commission grant a waiver allowing Mr. Zachary Nathan to serve.

If you need any further information, please do not hesitate to call.

Sincerely,

**Ann Marie Aherne
BIC Secretary**

BY _____
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SAN FRANCISCO
ETHICS COMMISSION
FILED