



# ETHICS COMMISSION CITY AND COUNTY OF SAN FRANCISCO

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EXECUTIVE DIRECTOR

Date: April 15, 2013

To: Members, Ethics Commission

From: John St. Croix, Executive Director  
By: Mabel Ng, Deputy Executive Director

Re: Request for Waiver from member of Historical Preservation Commission

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Jonathan Pearlman, an architect recently appointed by Mayor Lee for Seat 3 on the Historic Preservation Commission ("HPC"), has requested a waiver from the compensated advocacy provisions of section 3.224 of the San Francisco Campaign and Governmental Conduct Code ("C&GC Code"). Section 3.224 prohibits a City officer from receiving any compensation to communicate on behalf of any other person with any other City officer or employee with the intent to influence a governmental decision.

Under section 3.224(c), the Ethics Commission may waive the ban for any member of a City board or commission who, by law, must be appointed to represent any profession, trade, business, union or association. In determining whether or not to grant a waiver, the Commission may consider the ability of the City to recruit qualified individuals to fill the position if the waiver is not granted, the ability of the member to engage in his or her particular vocation if the waiver is not granted, and any other factors the Commission deems relevant. Ethics Com. Reg. 3.224-2(b).

Since 2004, the Commission has considered and granted seven requests for waivers from the compensated advocacy ban.<sup>1</sup> The information presented by Mr. Pearlman and the Mayor do not vary much from the information provided in the previous requests. For the reasons discussed below and set forth in the accompanying letters from Mr. Pearlman and the Mayor's Office, staff recommends that the Commission approve Mr. Pearlman's waiver request.

### Analysis

*1. May the Commission consider a waiver for the historical architect seat on the Historic Preservation Commission occupied by Mr. Pearlman?*

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<sup>1</sup> In one request from then-Building Inspection Commission President Ephraim G. Hirsch, the Commission granted the waiver provided that Mr. Hirsch work with the department head in his dealings with the Department of Building Inspection. The other waivers contained no conditions.

C&GC Code section 3.224(c) states that the Commission may waive the compensated advocacy ban for any member of a City board or commission who, by law, must be appointed to represent any profession, trade, business, union or association. Under Charter section 4.135, which sets forth requirements for members on the Historic Preservation Commission (HPC), Seat 3 must be “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.” Mr. Pearlman is a licensed architect who meets the requirements for Seat 3. Thus, he is a commission member who by law represents a profession, trade, business, union or association. Accordingly, he is eligible to request, and the Commission may determine whether to grant, a waiver from the compensation advocacy ban under C&GC Code section 3.224(c).

*2. Is a waiver necessary to enable the City to recruit qualified individuals to fill the architectural historian seat on the HPC?*

Mr. Pearlman was nominated by Mayor Lee for Seat 3 on the HPC on February 26, 2013; he was unanimously approved for the position by the Board of Supervisors on March 12, 2013. According to Mayor Lee’s letter, his office conducted a robust outreach for Seat 3, and eventually found a small number of people who possessed the qualifications, willingness, and time commitment to serve on the HPC. Of these applicants, Mr. Pearlman “was far and away the best candidate of the group.” Based on this information, it appears that a waiver may be necessary to enable the City to recruit qualified individuals to fill Seat 3 on the HPC.

*3. Is a waiver necessary to enable Mr. Pearlman to pursue his vocation?*

The ban in section 3.224 is personal to the City officer. The ban does not apply to “an associate, partner or employee of an officer of the City and County, unless it is clear from the totality of the circumstances that the associate, partner or employee is merely acting as an agent of the City and County officer.” C&GC Code § 3.224(b). Mr. Pearlman is a small business owner in San Francisco who co-founded Elevation Architects in 1995 and serves as design principal in his firm, which employs one full-time registered architect and a part-time administrative assistant. The firm’s co-founder serves as managing principal, handling the finances of the business and the interior design aspects of the firm’s projects. Elevation Architects works on large and small projects in the City, including ongoing renovations of some of the City’s historic and institutional buildings. Its projects have gone before City commissions for review, comment and action. As Mr. Pearlman explains, he has 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 the near future. Since Mr. Pearlman is lead on the project and there are no other representatives who know and understand the complex project, he will need to represent his client at the hearing.

Mr. Pearlman states that in addition to appearances at the Planning Commission, his firm will need to continue to submit work for approvals of both the Planning Department and the Department of Building Inspection. For much of the current and future work, Mr. Pearlman can have either an employee or project counsel present the projects; and he will recuse himself from any project presented before the HPC. However, while it is possible that Mr. Pearlman could

send someone else to appear before City officials and commissions, they will likely be nowhere near as qualified or as familiar with the projects since he operates such a small firm. Given that that's the case, a waiver should be granted so that Mr. Pearlman can continue his professional work in an effective manner.

### Conclusion

For the reasons set forth in the letters and above, staff recommends that the Commission grant the waiver request.

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