

# ETHICS COMMISSION

## CITY AND COUNTY OF SAN FRANCISCO

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JOHN ST. CROIX  
EXECUTIVE DIRECTOR

Date: February 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

William Scott Ellsworth, an architect who was appointed in September 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 City officers or employees. For the reasons discussed below, staff recommends that the Commission grant a waiver to Mr. Ellsworth. Mr. Ellsworth will attend the Commission’s February 8, 2010 meeting to respond to any questions that the Commission may have.

### Relevant Law

The AAC consists of five members who are appointed by and serve at the pleasure of the Building Inspection Commission. *See* 2007 San Francisco Building Code (“Building Code”) § 105A.3.2.1. The members hear written appeals brought by any person regarding action taken by the Department of Building Inspection in the enforcement of state Health and Safety Code laws, including the disabled access and adaptability provisions of the Building Code. *Id.*, § 105A.3.3. Two members of the AAC must be persons with a physical disability, two members must be experienced in construction, and one member must be a public member. *Id.*, § 105A.3.2.1. Members of the AAC must be electors of the City and County at all times during the term of their respective offices. S.F. Charter § 4.101.

Section 3.224 of the S.F. C&GC Code, the compensated advocacy ban, provides the following:

- (a) **Prohibition.** No officer of the City and County shall directly or indirectly receive 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.

(b) **Exceptions.** This section shall not apply to any communication by: (1) an officer of the City and County on behalf of the City and County; (2) an officer of the City and County on behalf of a business, union, or organization of which the officer is a member or full-time employee; (3) 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; or (4) a City officer acting in his or her capacity as a licensed attorney representing clients in communications with the City Attorney's Office, outside legal counsel hired by the City, or representatives of the City who are named in a pending litigation matter.

(c) **Waiver.** The Ethics Commission may waive the prohibitions in this section for any officer who, by law, must be appointed to represent any profession, trade, business, union or association.

In determining whether to grant Mr. Ellsworth a waiver from the compensated advocacy ban, the Commission may consider the following: 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 Reg. § 3.224-2(b).

### Analysis

1. *Is Mr. Ellsworth eligible to request a waiver?*

Mr. Ellsworth was appointed to serve as a member who is “experienced in construction” on the AAC. 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. In 2005, the Commission voted 4-0 to grant a waiver to Arnie Lerner, an architect sitting on the AAC in a seat reserved for a person “experienced in construction.” Staff believes that precedent means that Mr. Ellsworth is also eligible to seek a waiver because he was appointed to a seat designated for a person experienced in the construction trade, even though he technically was not appointed to *represent* a particular profession, trade, business, union or association.

2. *Is a waiver necessary to enable the City to recruit qualified individuals to fill the “experienced in construction” position on the AAC?*

Building Code section 105A.3.2.1 requires that the seat occupied by Mr. Ellsworth be filled by someone who is “experienced in construction.” According to Ann Aherne, secretary to the BIC (which is the commission that appoints members of the AAC), it has been difficult to recruit members of the public to serve on the AAC. In October, the BIC sent over 700 emails inviting persons to apply for three seats on the AAC. The BIC also posted the information on the website of the Department of Building Inspection and announced the openings publicly at the BIC meetings. The BIC received twelve applications, including the applications of the three members seeking reappointment. Disability access issues considered by the AAC are often complex and difficult to resolve without expertise and experience in the area. Ms. Aherne informed staff that recruitment to fill the seat occupied by Mr. Ellsworth, who was sworn in in

September 2009, was similar to the October recruitment.<sup>1</sup> Thus, staff believes that a waiver is necessary to enable the City to recruit qualified individuals to fill any seat on the AAC.

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

Mr. Ellsworth states that he is a licensed architect and solo practitioner working in the City. As such, he interacts with City departments on projects on which he works for his clients. In so doing, he intends to influence government decisions on behalf of his clients. Thus, the compensated advocacy ban will apply unless the Commission grants a waiver.

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. Ellsworth states that he works by himself; there is no one else in his office who would be able to submit projects and work with officers and employees at the Department of Building Inspection and the Planning Department on behalf of his clients. Thus, it appears that a waiver would be necessary to enable Mr. Ellsworth to pursue his vocation.

### Conclusion

Staff believes that based on precedent, Mr. Ellsworth is eligible to request a waiver from the compensated advocacy ban. Based on the facts provided, staff also believes that a waiver is warranted. Accordingly, staff recommends that the Commission grant a waiver to Mr. Ellsworth so that he may serve on the AAC and engage in compensated advocacy before City officers and employees.

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<sup>1</sup> Mr. Ellsworth’s predecessor was appointed in June 2007, served about six months and then was unable to serve due to health issues until his death in September 2008. Thus, the seat was vacant for at least one year until Mr. Ellsworth filled it in September 2009.

January 20, 2010

San Francisco Ethics Commission  
25 Van Ness Avenue, #220  
San Francisco, California 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 Access Appeals Commission as a member required to be experienced in construction by the Building Inspection Commission.

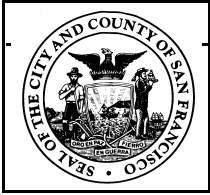
To maintain my ability to submit my clients' projects to the San Francisco Departments of Building Inspection and Planning, I will require a waiver to the Compensated Advocacy prohibition in the Municipal Code (Ethics Commission Regulation 3.224.2).

Thank you for your consideration of this request.

Sincerely,

William Scott Ellsworth  
Architect

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## **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

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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. William Scott Ellsworth to serve.

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

Sincerely,

Ann Marie Aherne  
BIC Secretary