

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

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. The Ethics Commission has calendared Mr. Nathan’s request for consideration at its meeting on February 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.

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.” 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. As the AAC’s “public member,” it is clear that Mr. Nathan was not appointed to represent any profession, trade, business, union or association; nor was he appointed as a person “experienced in construction.” Because he does not meet the eligibility criteria for a waiver, staff does not believe that he is 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. The Commission may consider staff’s recommendations on this and other proposals regarding the Government Ethics Ordinance at its next meeting.

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JAN-21-2010 02:22P FROM:

415-252-7649

TO: 2523112

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**ZACHARY
NATHAN
ARCHITECT**



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EMAIL nathanarch@earthlink.net

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

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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 draftsperson 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 expeditor where others have prepared plans and we are not the project architect. My clients

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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



10 JAN 22 AM 10:32

RECEIVED
OFFICE OF THE
CITY CLERK

January 19, 2010

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

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.

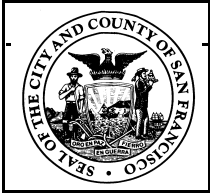
At the moment, we only have four appointed Commissioners, to lose Mr. Nathan would have a tremendously negative impact upon the Commission's ability to function and would adversely affect the ability of the appellants to obtain a fair decision.

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
1660 Mission Street, San Francisco, California 94103-2414

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

January 23, 2010

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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