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CITY AND COUNTY OF SAN FRANCISCO

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Date: July 2, 2020

To: Members of the Ethics Commission

From: Pat Ford, Senior Policy and Legislative Affairs Counsel

Subject: **AGENDA ITEM 10 – Discussion and possible action regarding request for waiver of compensated advocacy restriction for Yakuh Askew**

Summary

This memo provides background and analysis to assist the Commission in deciding whether to grant a waiver to allow Yakuh Askew to serve on the Arts Commission without being subject to the compensated advocacy restriction contained in Campaign and Governmental Conduct Code § 3.224(a).

Recommendation

That the Commission evaluate the waiver request as discussed below and, if it chooses to grant a waiver, narrowly tailor the waiver to address Mr. Askew's needs.

I. Background

On March 6th, Mayor London Breed's office submitted to the Ethics Commission a written request (attached to this memorandum as Attachment 1) that Yakuh Askew, whom the Mayor wishes to appoint to the Arts Commission, be exempted in part from the compensated advocacy restriction contained in Campaign and Governmental Conduct Code ("Code") section 3.224(a). The Mayor's office also included a letter from Mr. Askew (attached as Attachment 2) in support of the waiver request. The facts included in this memorandum are drawn from the Mayor's written request and Mr. Askew's letter.

Mayor Breed seeks to appoint Mr. Askew, a San Francisco architect, to a seat on the Arts Commission that can only be filled by an architect. As part of Mr. Askew's architecture practice, he regularly communicates with City commissions and departments to urge the approval of his clients' projects. If Mr. Askew were to become an Arts commissioner, he would be prohibited from receiving compensation to perform this advocacy. The Mayor and Mr. Askew have requested that Mr. Askew be permitted to engage in compensated advocacy before certain City commissions and departments after he is appointed to the Arts Commission.

II. Applicable Law

Code section 3.224(a) states that “[n]o 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.”¹ This prohibits City officials from, among other things, receiving payment from a client for communicating with City officials or staff to urge the approval of the client’s project. The prohibition contains certain exceptions, such as when a City officer is communicating on behalf of the City and when a City officer is practicing law and representing a client in discussions with the offices of the City Attorney, District Attorney, or Public Defender.²

The Code allows the Commission to grant waivers of the compensated advocacy prohibition, stating that “[t]he Ethics Commission may waive the prohibitions ... for any officer who, by law, must be appointed to represent any profession, trade, business, union or association.”³ Regulation 3.224-2 adds that when considering whether to grant such a waiver, “the Commission may consider: the ability of the City to recruit qualified individuals to fill the position in question 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.”⁴

Aside from the factors explicitly mentioned in Regulation 3.224-2, the Commission should consider whether granting a waiver would further the purposes of Article III Section II of the Code, known as the Government Ethics Ordinance. The Government Ethics Ordinance seeks to, among other objectives, “eliminate both actual and perceived undue influence, favoritism or preferential treatment without creating unnecessary barriers to public service.”⁵ The Commission should only grant a waiver if it finds that, on balance, the factors that indicate the need for a waiver outweigh any danger of undue influence, favoritism or preferential treatment with respect to the grantee’s compensated advocacy.

III. Facts Presented in the Request

Yakuh Askew is an architect based in San Francisco. He is the founder and principal of YA Studio, an architecture firm that designs commercial and residential buildings. As part of Mr. Askew’s work, he communicates with members of the Planning Commission, the Board of Appeals, and the Office of Community Investment and Infrastructure (OCII) to urge the approval of projects undertaken by YA Studio. Mr. Askew also communicates with employees of the Planning Department, Department of Building Inspection (DBI), Fire Commission, and Department of Public Works (DPW) for the same purpose.

¹ Campaign & Gov. Conduct Code § 3.224(a).

² *Id.* at § 3.224(b).

³ *Id.* at § 3.224(c).

⁴ Campaign & Gov. Conduct Code Regulation 3.224-2(b).

⁵ Campaign & Gov. Conduct Code § 3.200(e).

Mr. Askew has stated that if his being appointed to the Arts Commission would preclude him from engaging in this form of advocacy in the future, he would likely decline the appointment. The Mayor states that this is because the advocacy constitutes an important part of Mr. Askew's services provided to his architecture clients. Presumably his business would suffer if he were not able to communicate with commissions or departments in support of his clients' projects.

The Mayor also states that Mr. Askew is a particularly desirable appointee because of his emphasis on affordable housing, his status as a native San Franciscan and a minority business owner, and his leadership of a "small and cutting-edge architecture firm."

IV. Analysis

The compensated advocacy prohibition furthers the purpose of the Government Ethics Ordinance, which is chiefly to "promote fairness and equity for all residents and to maintain public trust in governmental institutions."⁶ The law seeks to ensure "that public officers and employees [are] independent, impartial, and responsible to the people and that public office and employment [is] not [] used for personal gain."⁷ The compensated advocacy prohibition furthers these goals by prohibiting City officers from receiving compensation in exchange for communicating with other officers or employees of the City in an attempt to influence the decisions made by those individuals. This is an important way to safeguard the integrity of government decision making and to preserve the public's trust in those decisions. The rule contemplates that City officers, in light of their position, may be able to exert undue influence over other City officers or employees to secure favorable outcomes for paying clients. This would create serious issues of unfair advantage, since City officers might be able to secure outcomes for clients that non-officials are not able to. This competitive advantage could also result in the officer using his or her officer for personal gain, since it could make the officer more attractive to clients. In turn, this situation would risk the public's confidence that City processes are carried out on the basis of merit, not under circumstances of undue influence.

With that in mind, the ability of the Commission to grant waivers to the compensated advocacy prohibition should be exercised sparingly, only being used in situations where the need for a waiver outweighs any danger of unfair advantage or undue influence. And, when a waiver is granted, it should be narrowly tailored to the specific needs of the requestor.

The waiver provision for the compensated advocacy prohibition states that the Commission may waive the rule for "any officer who, by law, must be appointed to represent any profession, trade, business, union or association." This exception envisions that the compensated advocacy prohibition will sometimes create difficulties when appointments must be filled by persons from specific trades or professions. These trades or professions can commonly involve compensated advocacy. This creates a high likelihood that persons who are eligible for the appointment because of their profession would also find themselves subject to a rule that would prevent them from

⁶ *Id.* at § 3.200(a).

⁷ *Id.* at § 3.200(b).

engaging in activities that are central to that very profession. In the current situation, the seat on the Arts Commission must be filled by an architect.⁸ Mr. Askew, as a licensed architect, appears to be qualified for the appointment. Thus, his situation is within the scope of the waiver provision, meaning that the Commission may grant a waiver.

In deciding whether to grant a waiver, the Commission may evaluate any factors, including the ability of the appointing authority to find qualified appointees in the profession and the ability of the appointee to practice his or her vocation without a waiver. Ultimately, the Commission should balance the need for a waiver with the danger of undue influence, favoritism or preferential treatment that might arise from the waiver. This will ensure that the purposes of the rule will be fairly balanced with the rule's impact on the requestor.

Factors that Indicate the Need for a Waiver

Here, there are multiple factors that indicate Mr. Askew's need for a waiver. For one, it is likely that many architects engage in compensated advocacy. This is likely a part of the profession that clients expect. An architect's inability to communicate with City commissions and departments to urge the approval of projects would likely harm the architect's business. Mr. Askew has stated that if he is subject to the full scope of the rule, he will likely refuse the appointment to the Arts Commission. This appears to be because he is unable to sustain the anticipated impact the rule would have on his business.

Another factor that is highlighted in the Mayor's request is the potential limiting effect that the rule would have on the field of potential appointees. The Mayor states that the rule will limit qualified appointments to architects who are retirees or who are members of large firms in which others can perform any necessary advocacy with the City. She emphasizes that Mr. Askew is a member of a small firm in which he needs to perform advocacy to complete projects. She also highlights that his leadership of a smaller firm makes him a more desirable appointee to the Arts Commission.

Factors that Indicate the Danger of Undue Influence or Unfair Advantage

On the other hand, the Commission should also weigh the danger of undue influence or unfair advantage that might exist should Mr. Askew be allowed to engage in compensated advocacy. As a general matter, it is difficult to assess the extent to which being a City officer would enable a particular person to exert undue influence over other City officers or employees and secure an unfair advantage. It is also difficult to assess the extent to which the public would perceive undue influence or unfair advantage in the situation. However, given that the current request is targeted at advocacy before a limited set of commissions and departments, it is easier to analyze its potential impact. The requests ask that Mr. Askew be allowed to receive compensation to communicate with the Planning Commission, the Board of Appeals, and OCII and with City

⁸ San Francisco Charter § 5.103. ("Eleven members shall be practicing arts professionals including two architects, a landscape architect, and representatives of the performing, visual, literary and media arts; and four members shall be lay members.")

employees working for the Planning Department, DBI, the Fire Commission, and DPW. For one, this limitation to a narrow set of City commissions and departments greatly reduces the potentially negative impact that the waiver would have (as opposed to a blanket waiver that would allow compensated advocacy with any commission or department). It does not appear that the work of these commissions and departments overlaps in large part with the work of the Arts commission, indicating that Mr. Askew's position as an Arts commissioner would not allow him to exert significant undue influence over the other commissions when seeking approval of his architectural projects.

Another way to mitigate the potential negative impacts of a waiver would be to tailor the waiver to allow only the kinds of compensated advocacy in which Mr. Askew presently engages. This would mean only allowing advocacy on behalf of clients of YA Studio and only on architectural projects. This would prevent Mr. Askew from using the waiver to advocate on issues or projects unrelated to his profession as an architect or to his business, which is the stated basis for his need of a waiver.

If these limitations were applied to the waiver, it is likely that the danger of undue influence and unfair advantage that would exist would be small. Separate rules would still require Mr. Askew to recuse himself from any matters before the Arts Commission in which he had a personal financial interest.⁹ And, under the Arts Commission's Statement of Incompatible Activities, he would be prohibited from using the prestige of his office as Arts commissioner, including City business cards, letterhead, email, or title, when engaging in advocacy communications.¹⁰

On balance, this form of narrowly tailored waiver would appropriately balance the requestor's needs with the public interests protected by the Code.

V. Conclusion

As discussed, Staff believes that a narrowly tailored waiver would be appropriate in Mr. Askew's situation. This waiver would be:

- Applicable only to Mr. Askew's advocacy communications with members of the Planning Commission, the Board of Appeals, and OCII and with City employees working for the Planning Department, DBI, the Fire Commission, and DPW
- Applicable only to Mr. Askew's advocacy on behalf of clients of YA Studio
- Applicable only to Mr. Askew's advocacy in relation to architectural projects

⁹ CA Gov. Code § 87100.

¹⁰ San Francisco Arts Commission, Statement of Incompatible Activities at IV.C, *available at* https://sfethics.org/wp-content/uploads/2015/08/Arts_Commission_SIA_040114.pdf.

ATTACHMENT 1



March 6, 2020

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

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

Dear Commissioners:

I have selected Yakuh Askew to serve as a member of the Arts Commission. The Arts Commission is established by the City Charter and consists of fifteen members, two of whom must be architects. *See attached* S.F. Charter § 5.103. I have selected Mr. Askew specifically to fill one of the architect seats. I believe that Mr. Askew is the best candidate for the position based on his extensive qualifications, deep experience and unique perspective as an African-American who owns and leads a vibrant, up and coming San Francisco architecture firm. I submit this request for a waiver of the compensated advocacy prohibition of San Francisco Campaign and Governmental Conduct Code (C&GCC) § 3.224 because of Mr. Askew's unique suitability for the position and because the absence of a waiver would force him to choose between service to the city and his livelihood. Respectfully, without a waiver, the field for this specialized seat narrows greatly, making it difficult to fill, and depriving the City of an ideal candidate like Mr. Askew.

Background on Yakuh Askew

Born and raised in San Francisco and principal of Y.A. studio since 2004, Yakuh Askew earned his Bachelor of Architecture degree from California Polytechnic, San Luis Obispo in 1998, which included an academic year in Florence, Italy. Mr. Askew is a licensed architect in California and Nevada, and a member of the American Institute of Architects, Local Business Enterprise, and National Organization of Minority Architects.

At Y.A. studio, Mr. Askew has built a design team that has proven itself designing single-family and multi-family residences, including extensive affordable housing developments, as well as commercial projects such as restaurants, offices, warehouses and medical facilities. Y.A. studio is based in San Francisco and committed to bringing an innovative and modern approach to architectural design, focused heavily on local projects. Y.A. studio was founded around the ideals of social responsibility within architecture, focusing on developing future skilled professionals, serving the under-served and under-housed within our communities, and elevating the social discourse of our built environment while minimizing its impact on the natural environment. Y.A. studio is a registered Certified Minority-Owned San Francisco Local Business Enterprise (LBE), and a Micro Business Enterprise (MBE).



Mr. Askew is committed to applying his talents and experience to promoting equity and justice in design projects and focuses the work of Y.A. studio intensely on the public good, particularly through affordable housing. In fact, 75% of Y.A. studio's current workload is 100% affordable housing units including family, formerly homeless, and senior units. For example, Y.A. studio just started construction on 45 units of formerly homeless senior housing on 24th and Harrison Streets in the Mission that incorporates the reinstallation of the Susan Cervantes Mural and other community murals.

Additional notable San Francisco affordable housing projects of Y.A. studio include: Potrero HOPE SF, Block X (73 affordable family units, completed 2019); 2060 Folsom Street (for Chinatown CDC, MEDA, 127 affordable residential units, under construction); Alice Griffith Housing, Block 5 (31 residential family units, completed 2019); Potrero HOPE SF, Block B (150 affordable family units for Bridge Housing, under construction); and Parcel Q, Sunnysdale Redevelopment (for Mercy Housing, 55 affordable family units, under construction). Notable local market rate projects of Y.A. studio include the Transbay Redevelopment Under Ramp Park, Candlestick Point Block 11a North and Hunters Point Shipyard, Block 48.

Mr. Askew's civic mindedness is also evident in his local service as a member of the Citizens' Bond Oversight Committee and as a member of the Lick-Wilmerding High School Board of Trustees, as well as in his desire to serve on the Arts Commission.

Mr. Askew's work, particularly at a small, budding firm occasionally requires him to appear before other local commissions, particularly the Planning Commission and the Board of Appeals. As the firm Principal, Mr. Askew personally presents to these commissions for various approvals and issues regarding Y.A. studio's projects. In particular, in the past five years, Mr. Askew has made the following appearances for projects before City commissions:

Planning Commission:

August 2019 (presented designs for a Discretionary Review and Conditional Use approval for a replacement single-family and ADU at 49 Hopkins);

November 2017 (presented regarding a Discretionary Review and Conditional Use at 2906 Folsom Street);

May 2017 (presented regarding a Discretionary Review filed by a neighbor at 1647 Sanchez Street);

June 2016 (presented for a mandatory Discretionary Review for 2178 Pine Street);

December 2015 (presented for a Discretionary Review filed by a neighbor for 2545 Greenwich);

Board of Appeals:

December 2015 (presented regarding a neighbor's appeal for 16 Iris).

Mr. Askew's firm also has projects in Mission Bay and Candlestick Point that are currently under review at the Office of Community Investment and Infrastructure (OCII). Mr. Askew's work also sometimes calls for him to communicate with staffers at the Planning Department, the



Department of Building Inspection, the Fire Commission and the street use team at the Department of Public Works.

Accordingly, I am requesting that a waiver be granted from C&GCC § 3.224 to allow Mr. Askew to appear specifically before the Planning Commission, the Board of Appeals and OCII and to communicate with members of such commissions and with staffers at the Planning Department, the Department of Building Inspection, the Fire Commission and the Department of Public Works.

The Arts Commission

The San Francisco Arts Commission is the City agency that champions the arts as essential to daily life by investing in a vibrant arts community, enlivening the urban environment and shaping innovative cultural policy. Specifically, per the City Charter, the Arts Commission is charged with approving designs for public structures, approving the design and location of City and County works of art, maintaining such works, promoting a neighborhood arts program and supervising and controlling the expenditure of all appropriations made by the Board of Supervisors for the advancement of the visual, performing or literary arts. *See attached S.F. Charter § 5.103.*

Campaign and Governmental Conduct Code Section 3.224

C&GCC § 3.224 prohibits an 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 employees of the City and County with the intent to influence a government decision. *See attached C&GCC § 3.224.*

This compensated advocacy prohibition has certain exceptions including allowing for an attorney to represent clients in communications with various City offices. However, it does not explicitly provide an exception for other professions who frequently are called upon to represent clients before City bodies, such as architects. Nevertheless, certain City commissions seats, such as the seat at issue here on the Arts Commission, as well as certain Historic Preservation Commission seats, specifically require an architect. C&GCC § 3.224 acknowledges these types of professional seats by allowing that "[t]he 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." C&GCC § 3.224(c).

Arguments in Support of the Waiver

I submit that Mr. Askew's proposed appointment is just such an occasion where a waiver should be granted for the following reasons.



Unique Qualifications

As discussed above, Mr. Askew is an ideal candidate uniquely suited for this position based not only on his stellar qualifications and record but also on the way his background fits with the mission and character of the Arts Commission. Mr. Askew's professional experience of committing to publicly beneficial local projects and lived experience as a native San Franciscan minority business owner dovetail with the important work of the Arts Commission. The City, through the Arts Commission, is committed to ensuring equity and representation in public structures and artwork and providing access to public cultural sites for all. Mr. Askew's commitment to the ideals of equity and accessibility are evident in his current workload of 75% affordable housing projects, many of which incorporate innovative designs for public space and cultural appreciation. Moreover, Mr. Askew's personal experience as a minority leader of a small and cutting-edge architecture firm brings a valuable perspective to the Arts Commission.

Difficulty in Filling This Specialized Seat

Some of the specific virtues that make Mr. Askew such an asset for this position are the same qualities that make application of the compensated advocacy prohibition unwarranted. This highlights the difficulty in filling such specialized professional seats in the face of the prohibition, which can drastically narrow the pool of qualified candidates from which to draw. This is also precisely the situation contemplated by the waiver provision of C&GCC § 3.224(c) for seats that must be appointed to represent a particular profession.

Several City commission seats call for architecture professionals in particular and this is a profession that is also frequently called upon to appear before various commissions, including the Planning Commission and the Board of Appeals to address various permits, approvals and other entitlements. While the legal profession, in particular, has a permanent exemption from the compensated advocacy waiver rule, architects are needed for several city seats but then asked to withdraw from a significant part of their livelihood to do so. This creates a Catch-22 for the City as well where certain seats are by their nature very difficult to fill because practicing, successful local architects are frequently engaged in their own work before City commissions.

In particular, architects from smaller, up and coming firms are impacted by this rule. Mr. Askew has just such a practice which grants him more autonomy to pursue his own vision, including dedication to affordable housing, but does not allow him to delegate the necessary advocacy work before commissions to others in his firm to the same extent that an architect at a larger, more established firm might. Also, in the absence of a waiver, younger, rising professionals become less available, favoring principals at large firms or even retirees that no longer need to participate in compensated advocacy at City commissions.



Results if No Waiver Granted

I believe that the absence of a waiver here would have unfortunate results. Mr. Askew's relatively small practice calls upon him to represent his clients before City commissions as the firm principal and lead architect. With a staff of only 11 other people, only one of whom is currently in a position to appear before commissions for the firm, it is critical to Mr. Askew's practice that he appear before City commissions in certain instances. Without a waiver, Mr. Askew would be forced to choose between service to the City and a significant part of his own livelihood. It is very likely that he would be unable to serve on the Arts Commission. Such a result would deprive the City of his valuable service and is unnecessary as the waiver provision exists to allow for such professional specialized seats to be filled. Moreover, there are additional policy consequences, as such a result skews the field of available appointees to members of larger, more established firms or even retirees. This also steers the field away from younger and minority appointees, setting back the City's commitment to diversity and representative leadership across City commissions. In fact, this specifically impedes the directive of City Charter Section 4.101(a)(1) that the composition of each City commission "[b]e broadly representative of the communities of interest, neighborhoods, and the diversity in ethnicity, race, age, and sexual orientation, and types of disabilities of the City and County and have representation of both sexes." *See attached S.F. Charter § 4.101.*

Representatives of smaller and more diverse professional firms should not be disproportionately penalized by the compensated advocacy rule. This is clearly not the intent of the rule. In fact, this demonstrates the importance of the waiver provision and why a waiver is appropriate in this case. Additionally, the purpose of the rule is undoubtedly not to deprive the City of highly qualified appointees and this should not be its effect.

Furthermore, the issues concerning undue influence or conflicts that the compensated advocacy rule are designed to address will not come to pass regarding Mr. Askew if he is appointed. As a practical matter, his firm has never had a proceeding before the Arts Commission specifically. None are currently scheduled and, if one did arise, Mr. Askew would follow the recusal procedures that are set out in detail in other sections of the C&GCC.

Thus, I believe that Mr. Askew's unique experience and qualifications, his commitment to the local public good, his status as a small business owner and the lack of any conflict between his work and that of the Arts Commission all counsel strongly in favor of granting a waiver to Mr. Askew from C&GCC § 3.224 that would allow him to serve on the Arts Commission and to continue his work before the City commissions and departments described above. I respectfully request that the Ethics Commission grant such a waiver.

OFFICE OF THE MAYOR
SAN FRANCISCO



MAYOR LONDON N. BREED

Sincerely,

A handwritten signature in blue ink that reads "London Breed".

London N. Breed
Mayor
City and County of San Francisco

SEC. 5.103. ARTS COMMISSION.

The Arts Commission shall consist of fifteen members appointed by the Mayor, pursuant to Section 3.100, for four-year terms. Eleven members shall be practicing arts professionals including two architects, a landscape architect, and representatives of the performing, visual, literary and media arts; and four members shall be lay members. The President of the Planning Commission, or a member of the Commission designated by the President, shall serve ex officio. Members may be removed by the Mayor.

The Commission shall appoint and may remove a director of the department. The Commission shall encourage artistic awareness, participation and expression; education in the arts; assist independent local groups with the development of their own programs; promote the employment of artists and those skilled in crafts, in the public and private sectors; provide liaison with state and federal agencies to ensure increased funding for the arts from these agencies as well as represent arts issues and policy in the respective governmental bodies; promote the continued availability of living and working space for artists within the City and County; and enlist the aid of all City and County governmental units in the task of ensuring the fullest expression of artistic potential by and among the residents of San Francisco.

In furtherance of the foregoing the Arts Commission shall:

1. Approve the designs for all public structures, any private structure which extends over or upon any public property and any yards, courts, set-backs or usable open spaces which are an integral part of any such structures;
2. Approve the design and location of all works of art before they are acquired, transferred or sold by the City and County, or are placed upon or removed from City and County property, or are altered in any way; maintain and keep an inventory of works of art owned by the City and County; and maintain the works of art owned by the City and County;
3. Promote a neighborhood arts program to encourage and support an active interest in the arts on a local and neighborhood level, assure that the City and County-owned community cultural centers remain open, accessible and vital contributors to the cultural life of the City and County, establish liaison between community groups and develop support for neighborhood artists and arts organizations; and
4. Supervise and control the expenditure of all appropriations made by the Board of Supervisors for the advancement of the visual, performing or literary arts.

Nothing in this section shall be construed to limit or abridge the powers or exclusive jurisdiction of the charitable trust departments or the California Academy of Sciences or the Library Commission over their activities; the land and buildings set aside for their use; or over the other assets entrusted to their care.

SEC. 3.224. PROHIBITION ON REPRESENTING PRIVATE PARTIES BEFORE OTHER CITY OFFICERS AND EMPLOYEES – COMPENSATED ADVOCACY.

(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 in his or her capacity as a licensed attorney engaged in the practice of law, which includes representing clients in communications with the City Attorney's Office, District Attorney's Office, Public Defender's Office, attorneys in the Tax Collector's Office or Sheriff's Office, outside legal counsel hired by the City, representatives of the City who are named in a pending litigation matter or witnesses or potential witnesses 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.

(Added by Proposition E, 11/4/2003; Ord. 97-06, File No. 051837, App. 5/19/2006; Ord. 244-09, File No. 091013, App. 12/3/2009)

SEC. 4.101. BOARDS AND COMMISSIONS – COMPOSITION

(a) Unless otherwise provided in this Charter, the composition of each appointive board, commission or advisory body of any kind established by this Charter or legislative act of the United States of America, the State of California or the Board of Supervisors shall:

1. Be broadly representative of the communities of interest, neighborhoods, and the diversity in ethnicity, race, age, and sexual orientation, and types of disabilities of the City and County and have representation of both sexes; and
2. Consist of electors of the City and County at all times during the term of their respective offices, unless otherwise specifically provided in this Charter; or in the case of boards, commissions or advisory bodies established by legislative act the position is (a) designated by ordinance for a person under legal voting age, or (b) unless specifically exempt from the provisions, or waived by the appointing officer or entity upon a finding that an elector with specific experience, skills or qualifications willing to serve could not be located within the City and County.

It shall be the official City policy that the composition of each appointive board, commission, or advisory body of any kind established by this Charter or legislative act of the United States of America, the State of California, or the Board of Supervisors shall reflect the interests and contributions of both men and women of all races, ethnicities, sexual orientations, and types of disabilities. The voters therefore urge in the strongest terms all City officers and agencies involved in nominating, appointing or confirming members of those appointive boards, commissions, or advisory bodies to consider and as appropriate support the nomination, appointment or confirmation of female, minority, and disabled candidates to fill seats on those bodies.


The Commission on the Status of Women shall conduct an analysis of appointments to appointive boards, commissions, and advisory bodies in the second and fourth year of each mayoral administration to track the diversity of appointments to such bodies. This analysis, to be based only on voluntary disclosures, shall include gender, ethnicity, sexual orientation, disability status, and any other relevant demographic qualities.

(b) Vacancies on appointive boards, commissions or other units of government shall be filled for the balance of the unexpired term in the manner prescribed by this Charter or ordinance for initial appointments.

(c) Terms of office shall continue as they existed on the effective date of this Charter.

(Amended by Proposition D, 6/3/2008)

ATTACHMENT 2



March 6, 2020
San Francisco Ethics Commission
25 Van Ness Avenue, #220
San Francisco, CA 94102

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

Dear Commissioners:

I understand that I am under consideration by Mayor London Breed for an appointment to the San Francisco Arts Commission. The Arts Commission requires that two of its seats be filled by architects.

I am a licensed architect in the state of California and the principal of Y.A. studio, since 2004, a San Francisco based architecture firm with extensive experience in the design of local single-family and multi-family residences, including extensive affordable housing developments, as well as commercial projects such as restaurants, offices, warehouses and medical facilities. I earned my Bachelor of Architecture degree from California Polytechnic, San Luis Obispo in 1998, which included an academic year in Florence, Italy. I am also a member of the American Institute of Architects, Local Business Enterprise, and National Organization of Minority Architects.

As an architect born and raised in San Francisco, I am grateful for the opportunity presented by this appointment and eager to apply my experience, skills and perspective to the architecture role on the Arts Commission, which plays such a critical part in promoting excellence, accessibility and awareness in the arts.

My work at Y.A. studio has occasionally required me to appear before local City commissions regarding various project approvals, in particular, the Planning Commission and the Board of Appeals. As principal and lead architect at a small and leanly staffed design firm, I have always personally presented at such hearings rather than delegating them to another. I have appeared about once a year for such matters in the last five years. We have 11 other people on staff at Y.A. studio and currently only one of these would be in a position to make such presentations on behalf of the firm. Accordingly, it is probably that I will sometimes be called

upon to present at certain city commissions going forward. In addition to the Planning Commission and the Board of Appeals, my firm has work that is under review before the Office of Community Investment and Infrastructure (OCII). Further, my work calls for me to communicate with staffers at the Planning Department, the Department of Building Inspection, the Fire Commission and the street use team at the Department of Public Works. Nonetheless, Y.A. studio has never had a proceeding directly before the Arts Commission and we are unlikely to have any such matters in the foreseeable future.

I understand that local Campaign and Governmental Conduct Code Section 3.224 creates certain restrictions around compensated advocacy for city commissioners. I also understand that a waiver may be granted for a commission seat that requires a representative of a certain profession, such as architecture. In light of my past role in presenting at City commissions other than the Arts Commission, and the possibility that some future projects may call for Y.A. studio to again appear before such commissions, I am respectfully asking that a waiver be granted for me to be able to fill one of the architect seats on the Arts Commission. If a particular project of mine came before the Arts Commission in the future, I would, of course, abide by all applicable recusal procedures.

As the principal of a small firm, it is likely that I would need to forego public service on the Arts Commission if compelled to choose between such service and a significant part of my livelihood. I hope this will not be the case.

Thank you for your consideration of my request. Please let me know if the Commission would like more information to aid in its decision.

Sincerely,

A handwritten signature in black ink, consisting of a series of fluid, connected strokes that form a stylized representation of the name Yakuh Askew.

Yakuh Askew, AIA, NOMA, LEED AP

ATTACHMENT 3

Kimberlee Stryker Design, Landscape Architecture

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March 9, 2020

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

Re: SFAC Commission Candidate Architect Yakuh Askew

Dear Ladies and Gentlemen of the Ethics Commission,

I am the Vice-President of the San Francisco Arts Commission as well as the Chair of the Civic Design Review (CDR) Committee. Since early September the Arts Commission and the CDR Committee has had an absence in one of the architect seats. This vacancy has made it difficult to satisfy quorum requirements and we have had to cancel some meetings because only one or no design professionals could be present. I understand that Architect Yakuh Askew has been recommended for that seat. I respectfully submit that this position should be filled as soon as possible by Mr. Askew.

The CDR Committee fulfills a charter-mandated responsibility of the Arts Commission (See Charter Section 5.103). The committee is comprised of at least 5 Commissioners with requirements for a minimum of two architects, one landscape architect and other design professionals or lay people. Commissioners are appointed by the Mayor. I fill the landscape architect's seat.

The duties of the CDR Committee are unique within the City's structure of agency commissions. We provide a multi-phase review process of "civic buildings, viaducts, elevated ways, gates, fences, street furniture, lamps and other structures on City and Country land". This includes projects that span from temporary Muni operator restrooms to projects at the S.F. Airport (including the air traffic control tower recently constructed), public parks, and projects that are part of the P.U.C.'s holdings that constitute the Hetch Hetchy water system that supplies water to San Francisco. In total, we review projects worth hundreds of millions of dollars that are sponsored by the City's various agencies. The three required professionals of two architects and one landscape architect are essential to a qualitative review of the projects that come before us. We serve in these roles with earnest and diligent care, offering design critiques, suggestions for cost savings and attention to budget and timelines.

It can be very difficult to find appropriately qualified architects and landscape architects for the CDR Committee and the effort is time consuming. Architects and landscape architects must hold current California licenses. They must live in San Francisco. They must have professional skills and experience that is appropriate to the public or urban design projects that they will review. Many of these professionals are unwilling to participate on the CDR Committee because it requires a great deal of professional time away from a busy office. Our meetings run for three or four hours, and occasionally more, on a monthly basis. In addition, commissioners are required to attend full commission meetings each month and are usually asked to serve on

an additional committee. This makes it challenging to find qualified candidates who are willing to serve.

There is a great urgency in filling the current opening of one of the architect's seats. We have been without a second architect since early September. The absence of a second architect restricts our ability to offer a quality design review that we attempt for all city projects we see. It has made it difficult to meet quorum during some months which has delayed the review process for a number of public projects that have tight budgets and timelines.

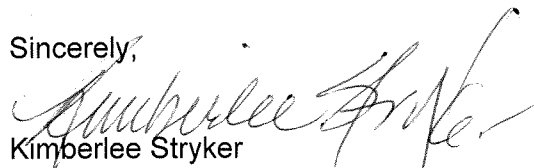
I understand there may be concern about the appearance of conflicts of interest regarding appointees of the Arts Commission with respect to their own professional practices. I'd like to address that directly. First, actual cases of conflict of interest don't happen in practice. Members of the CDR Committee automatically recuse themselves if a project comes before us that has been designed by their firm, or if a family member presents a project from a separate firm. These recusals are done to avoid having even an appearance of conflict, consistent with the City ethics code. Certainly, no CDR member would present on their own project to the CDR or to the Arts Commission as a whole. I understand that Mr. Askew has never appeared before the Arts Commission on one of his projects and does not expect to have any scheduled before the Arts Commission in the near future.

The reality is there has never been an actual conflict of interest in my nearly ten years on the Committee. We are diligent to avoid the possibility that any of our committee members can benefit financially or any other way from these public projects which we review. For example, commissioners do not benefit from the awarding of projects. Most projects that come before us are designed by city-employees who have in-house contracts with agencies they work for. Occasionally designers come before us from the private sector who have been engaged by a City agency for a specific project. These designers have already been vetted and have signed contracts for their work through their agency. Their hiring process has already gone through the RFP process of their employing agency and the terms already negotiated and finalized long before we see any of their projects. We have no means to affect the hiring of any private consultants. We cannot influence contracts that have already been signed. Construction contractors, engineers and any other consultants have already been engaged and contracts negotiated long before they bring their projects for review. Our role is solely to review the aesthetics and the appropriateness of their design proposals.

Therefore, the professional practice of Mr. Askew or a similar appointee should not present a significant obstacle to their appointment because the recusal procedures and the practices of the Arts Commission help to ensure the avoidance of any actual or potential conflict.

I appreciate your interest in assuring that we seat a qualified architect on our Commission. I am available to you to answer any questions you might have regarding the role of CDR Commissioners or the types of projects we review. I wish to extend my thanks for your help.

Sincerely,



Kimberlee Stryker

Chair, CDR Committee and Vice-President of the SFAC