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JOHN ST. CROIX
EXECUTIVE DIRECTOR

Date: April 13, 2009
To: Members, Ethics Commission
From: John St. Croix, Executive Director
Re: Request for Waiver from member of Board of Examiners

Patrick Buscovich, a structural engineer appointed to the Structural Engineer seat on the Board of Examiners of the Department of Building Inspection, 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. As reflected in the draft formal advice letter enclosed with the Commission's packet, staff has concluded that the compensated advocacy provisions do not apply to Mr. Buscovich because he is not a City "officer" as that term is defined in the City's Administrative Code. If the Commission adopts the proposed advice letter, then Mr. Buscovich's request for a waiver will be moot. But if the Commission rejects staff's proposed advice, then staff recommends that the Commission consider and approve the waiver request.

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 Comm. Reg. 3.224-2(b).

In September 2005, the Commission, by a vote of 3-1 (Hansen, Lynn, McCoy supporting and Anglade opposing), granted Mr. Buscovich a waiver from section 3.224 in order for him engage in compensated advocacy on behalf of other persons while serving as a member of the Unreinforced Masonry Building Appeals Board. The material facts have not changed significantly since that time. For the reasons discussed below, staff recommends that the Commission approve Mr. Buscovich's waiver request.

Analysis

1. *May the Commission consider a waiver for the structural engineer seat on the Board of Examiners that will be occupied by Mr. Buscovich?*

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. Building Code section 105A.1.4 requires at least one member of the Board of Examiners to be a licensed structural engineer. Mr. Buscovich is a licensed structural engineer who will occupy the structural engineer seat. Thus, he will be a board 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 structural engineer seat on the Board of Examiners?

As a licensed structural engineer who makes his living in San Francisco, Mr. Buscovich informed staff that he designs projects and interprets building codes for his clients. In the course of this work, he regularly contacts and seeks to influence employees and officers in the Department of Building Inspection, the Planning Department and other City agencies on behalf of his clients. Mr. Buscovich also informed staff that there are approximately 40 licensed structural engineers in the City. Based on this information, it appears that there is a limited pool of qualified candidates who could fill the structural engineer seat on the Board of Examiners. That pool is further restricted by the fact that seats on other City boards and commissions, including the Building Inspection Commission and the Unreinforced Masonry Building Appeals Board, also must be filled by structural engineers. Thus, staff believes that a waiver may be necessary to enable the City to recruit qualified individuals to fill the structural engineer seat on the Board of Examiners.

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

Mr. Buscovich informed staff that he is a practicing engineer who represents his clients in daily contact with the Department of Building Inspection as well as other City departments. Because he seeks, among other things, permits on behalf of his clients, he regularly seeks to influence government decisions on behalf of his clients.

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. Buscovich states that he has only one partner and a handful of associates at his firm. His partner rarely appears before City agencies, and Mr. Buscovich states that he cannot delegate his representation of clients, particularly with respect to the interpretation of City’s building code sections – some of which Mr. Buscovich helped to write – to either his partner or associates.

Conclusion

Staff recommends that the Commission grant the waiver request.