



# San Francisco Ethics Commission

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Date: January 13, 2025

To: Members of the Ethics Commission

From: Michael Canning, Policy & Legislative Affairs Manager

Re: **AGENDA ITEM 11 – Discussion and possible action regarding request for waiver of compensated advocacy prohibition for Hans Baldauf.**

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## Summary and Action Requested

This memo provides background and analysis to assist the Commission in determining whether to grant a waiver to allow Historic Preservation Commissioner Hans Baldauf to engage in compensated advocacy before certain commissions and departments, notwithstanding the restriction contained in [Section 3.224\(a\)](#) of the Campaign and Governmental Conduct Code (C&GCC).

The Commission should evaluate Mr. Baldauf’s waiver request as required by City law and determine if such a limited waiver is appropriate and consistent with the purposes of the City’s ethics rules.

## Background

On December 5, 2024, Mr. Baldauf sent a waiver request to the Ethics Commission for the prohibition in [Section 3.224\(a\)](#) of the C&GCC. This waiver request is provided as [Attachment 1](#). Mr. Baldauf was nominated by Mayor Breed to Seat 2 of the Historic Preservation Commission (HPC) and that nomination was confirmed by the Board of Supervisors on December 4, 2023. Note that the memo in [Attachment 1](#) incorrectly states Mr. Baldauf is serving in Seat 6, but Staff have confirmed Seat 2 is Mr. Baldauf’s correct position on the HPC.

## Applicable Law

[Section 3.224\(a\)](#) of the C&GCC prohibits City officers 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 employee of the City and County with the intent to influence a government decision.” This rule prohibits what is commonly referred to as “compensated advocacy.” 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.

The compensated advocacy prohibition furthers the purpose of the Government Ethics Ordinance, which as described in [Section 3.200](#), is chiefly to “promote fairness and equity for all residents and to

maintain public trust in governmental institutions.” 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.” 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 positions, 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 office for personal gain, since it could make the officer more attractive to clients. In turn, this situation would risk harming the public’s confidence that City processes are carried out on the basis of merit, not under circumstances of undue influence.

#### Waiver Authority of the Ethics Commission

Notwithstanding these important policy interests, the Code allows the Commission to grant waivers of the compensated advocacy prohibition. The Code allows for waiver of the prohibition for an “officer who, by law, must be appointed to represent any profession, trade, business, union or association.” [Ethics Commission 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.” Only an officer whose appointment was based on membership in a given profession, trade, business, union or association can apply for a waiver from the compensated advocacy prohibition.

When considering a waiver requested by such an officer, the Commission should consider the potential for undue influence or unfair advantage. This consideration should always be the basis of the Commission’s decision as to whether a waiver is appropriate. However, this limited set of waiver requests should be analyzed in a way that gives added weight to the requestor’s need for a waiver. The Code’s specific reference to officers appointed to represent particular professions envisions that the compensated advocacy prohibition will sometimes create difficulties when appointments must be filled by persons who, by nature of their qualifying characteristic, may also be involved with matters before City departments. However, such applications do not need to be automatically granted; applications by this set of officers still require evaluation to ensure that a waiver is appropriate.

When considering waiver requests, the Commission should consider whether granting a waiver would further the purposes of the Government Ethics Ordinance. The Commission should only grant a waiver if it finds that, on balance, the factors that indicate the need for a waiver outweigh the danger of undue influence, favoritism or preferential treatment that is present with respect to the grantee’s compensated advocacy.

Waiver requests are evaluated based on the facts that are provided in the request. These facts allow the Commission to evaluate whether a waiver is appropriate, and the facts provided must therefore be complete and accurate. Any waiver that the Commission grants is limited to the facts provided, and, should the facts change, the requestor should seek an updated waiver from the Commission.

## Facts Presented

Mr. Baldauf's appointment to Seat 2 of the Historic Preservation Commission was confirmed by the Board of Supervisors on December 4, 2023. Per [Section 4.135](#) of the City's Charter, Seat 2 may only be filled by "licensed architects meeting the Secretary of the Interior's Professional Qualifications Standards for historic architecture." Mr. Baldauf meets these qualifications, as he is a California licensed architect with more than two years of experience in historic architecture.

Mr. Baldauf has a Master's degree in Architecture from Yale University and has been a founding partner of BCV Architecture + Interiors since 1997. Mr. Baldauf's firm is based in San Francisco and has a small office in New York.

At times throughout his career, Mr. Baldauf has been asked to meet with City officials and departments regarding certain projects. Mr. Baldauf states that the purpose of these meetings is to better understand the City's desires related to the projects, but that since these are conversations, he may end up expressing a client's view as part of the dialogue. Baldauf also states that in limited instances it is important for his ability to practice architecture in the City, that he be able to fully engage with the community and the City on behalf of his firm's clients. As one of three founding partners at his firm, Mr. Baldauf is responsible for his client's projects and ensuring those projects are in alignment with the interests of the community and the City.

In order to continue his work with BCV Architecture + Interiors and continue serving on the HPC, Mr. Baldauf is requesting a waiver to allow him to communicate, both verbally and in writing, with the following City entities:

- Port Commission and Port staff;
- PUC and PUC staff;
- Department of Public Works staff;
- Arts Commission and Arts Commission staff;
- Recreation and Parks staff;
- Mayor's Office of Housing and Community Development staff; and
- Members of the Board of Supervisors and their Staff.

Mr. Baldauf stated he would only appear before any of these commissions under a waiver, if one were to be granted, in situations where other members of his firm were not available. Baldauf has also said that to the degree possible, he will delegate the responsibility of making these communications to other employees of his firm, but that there may be times when this is not possible.

Mr. Baldauf has also specified that he is not seeking a waiver to communicate with the HPC or the Planning Commission (which is partially controlled by the HPC), and that he understands he would need to potentially recuse himself from any matters regarding his firm's projects, should they come before the HPC.

Mr. Baldauf has also stated that not receiving a waiver could significantly impact his work and may eventually compel him to discontinue his service as a commissioner.

## Analysis

As discussed above, the Commission should grant waivers only in situations where the need for a waiver outweighs the 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.

### Applicability of Waiver Provision

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." In the current situation, Seat 2 on the Historic Preservation Commission must be filled by an architect with specific credentials. Mr. Baldauf, as a licensed architect holding those credentials, was appointed to Seat 2. Thus, he is in the class of individuals who can request a waiver under this provision, meaning that the Commission may grant a waiver if it finds that doing so is appropriate.

### Relevant Factors to Consider

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 factors indicating the need for a waiver against 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.

Here, there are multiple factors that indicate Mr. Baldauf's need for a waiver. Of primary importance is the limiting effect that the rule would have on the field of potential appointees, given the specific and unique qualification requirements of the commission seat. In a similar waiver request for a Historic Preservation Commissioner serving in Seat 1 in 2021, the Mayor's office told the Commission that imposing the rule for Ruchira Nageswaran would effectively limit service to architects who are retirees or those who are members of large firms in which others are always other employees available to perform any necessary advocacy with the City. The qualifications for Seat 1 and Seat 2 are the same. In 2021, the Commission granted a limited waiver to Ruchira Nageswaran. It can take the City many months to fill appointments, and that is time where the HPC's work could be delayed or disadvantaged. It is also likely that many architects who would be otherwise qualified for this seat would be in similar situations to Mr. Baldauf and end up requesting similar waivers from the Commission, if appointed.

Secondly, it is likely that many architects engage in compensated advocacy and that this is a part of the profession that clients expect. This entails that an architect's inability to communicate with City commissions and departments to urge the approval of projects would likely harm the architect's business or make them less effective in their work. This aligns with what Mr. Baldauf has claimed in his request, which is that the absence of a waiver might prevent him from continuing his professional growth and providing fully engaged service to his clients, to the point that he may eventually be compelled to discontinue his service on the HPC.

#### Potential Danger of Undue Influence or Unfair Advantage

As mentioned, the Commission should also weigh the danger of undue influence or unfair advantage that might exist should Mr. Baldauf be allowed to engage in compensated advocacy.

The waiver requested is limited to communications with City officials in seven City departments. This limited scope reduces the potentially negative impacts of a waiver, whereas there would be more opportunities to potentially abuse a waiver that applied to all departments across the City. Of great importance here is that fact Mr. Baldauf is not requesting a waiver for communications with the HPC or Planning. Given that Mr. Baldauf serves on the HPC and the HPC is closely connected to Planning, a waiver for communicating with those entities could more easily lead to instances of undue influence or unfair advantage, since the City officers and employees of these entities work closely with Mr. Baldauf in his capacity with the City. The departments for which Mr. Baldauf has requested a waiver have limited overlap with the work of the HPC and are thus less likely to feel pressured to give Mr. Baldauf or his clients preferential treatment.

Mr. Baldauf has also committed to only using a potential waiver to appear before commissions in situations where other members of his firm are not available and to delegate, to the degree possible, the responsibility for any communications with the City to employees of his firm. This commitment should limit Mr. Baldauf's use of any potential waiver only to situations in which Mr. Baldauf is the only qualified person available to communicate with the City on behalf of his firm and its clients.

While not explicit in Mr. Baldauf's waiver request, it appears his main interest is in representing his firm and its clients. As such, Staff would recommend that any potential waiver granted by the Commission be limited to communications made on behalf of Mr. Baldauf's firm or its clients. Mr. Baldauf should be prohibited from receiving compensation for communicating with the City on behalf of other people or entities who are not connected to BCV Architecture + Interiors.

## Recommendation

Given the limited nature of the waiver requested, particularly that the waiver would not apply to communications with the Historic Preservation Commission, the Planning Commission, or its employees, Staff recommends the Commission grant Mr. Baldauf a limited waiver to the City's compensated advocacy prohibition in [Section 3.224\(a\)](#).

If the Commission agrees that Mr. Baldauf's need for a waiver outweighs any potential for undue influence or unfair advantage that such a waiver may cause, the Commission should vote to grant Mr. Baldauf a waiver. Such a waiver should be:

- Applicable only to communications made to:
  - Port Commission and Port staff;
  - PUC and PUC staff;
  - Department of Public Works staff;
  - Arts Commission and Arts Commission staff;
  - Recreation and Parks staff;
  - Mayor's Office of Housing and Community Development staff; and
  - Members of the Board of Supervisors and their Staff.
- Applicable only for communications made on behalf of BCV Architecture + Interiors or its clients.
- Applicable only in situations where other qualified members of Mr. Baldauf's firm are not available or where Mr. Baldauf is the most appropriate spokesperson within his firm.

It is important to note that all the other ethics rules would still apply to Mr. Baldauf were a waiver of the compensated advocacy prohibition to be granted. Notably, Mr. Baldauf must recuse himself from any matters before the Historic Preservation Commission in which he has a personal financial interest, including any matters concerning BCV Architecture + Interiors ([CA Government Code 87100](#)). Additionally, all commissioners are prohibited from using their public position or office to seek anything of value for the private or professional gain of themselves, their immediate family members, or an organization with which they are associated ([Section 3.207\(a\)\(1\)](#) of the C&GCC). This rule, as well as those in [Section 3.218](#) of the C&GCC would prohibit Mr. Baldauf from using his title as commissioner or in any other way invoking his City position when communicating with City commissions or staff regarding a project of his firm.

It is also worth noting that waivers do not apply retroactively, so if Mr. Baldauf has already made communications with the City that may violate [Section 3.224\(a\)](#), he should contact the Ethics Commission's Enforcement Division to report and resolve any potential violations.

Staff would like to thank Mr. Baldauf for his detailed waiver request, responsive communications to Staff, and service to the City.

**Attachments:**

**Attachment 1:** [Waiver Request from Hans Baldauf – 12.5.24](#)

# ATTACHMENT 1



December 5, 2024

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 was nominated by Mayor Breed to Seat 6 of the Historic Preservation Commission and confirmed by the Board of Supervisors on December 4, 2023. Seat 6 must be filled by an architect with a minimum of two years experience in historic architecture.

I am a California licensed architect and qualified under the Secretary of the Interiors Professional Qualifications Standards for Architecture and Historic Architecture. I received my Master's Degree in Architecture from Yale University in 1988. I have been a partner at BCV Architecture + Interiors since, I, along with two partners founded the firm in 1997. We are based here in San Francisco and have a small office in New York. We have the opportunity of working on a wide range of projects from urban master planning, new construction and adaptive reuse projects. I am a keen student of architectural history and have chaired the Maybeck Foundation which partnered with the Parks and Recreation Commission to restore the Palace of Fine Arts.

From time to time, throughout my career, I have been asked to meet with City officials and departments in connection with projects. These meetings often are to better understand the City's desires in relation to the project, but because they are conversations, it is inevitable that one might express a client's point of view.

I understand that local Campaign and Governmental Conduct Code Section 3.224 creates certain restrictions around commissioners engaging in compensated advocacy on behalf of clients. I also understand that a waiver may be granted for a commission seat that requires a representative of a certain profession, such as an architect. I am respectfully seeking a limited waiver under this provision to allow me to engage with certain City officials and departments on behalf of clients under certain circumstances, as set forth below.

**BCV ARCHITECTURE + INTERIORS**





As a member of the San Francisco architecture community, I believe it is important to be able to understand all of the various opinions and concerns that projects bring up and to be part of a dialogue. I recognize that my role as a Historic Preservation Commissioner comes first in regards to projects that come before the Commission, but there are other projects where the ability to communicate freely with elected officials and certain City department staff in limited instances is important to my ability to practice architecture here in San Francisco in a way that fully engages with the community on behalf of my clients.

These types of communications would allow me to better understand community and agency feedback regarding specific projects so that my firm can be more responsive to such concerns. As one of the three founding partners of my firm, I am responsible for ensuring that the firm's projects meet not only the functional, aesthetic, and economic goals of our clients but also enrich the communities and environments in which they are built, which benefits inhabitants, visitors and neighbors alike. To achieve these goals we strive to understand the unique cultural, historic and environmental characteristics of a place so that we can seamlessly integrate our projects into their surroundings. Our firm incorporates the notion of environmental and cultural sustainability into every project, considering the ethical, cultural, social, economic and historical implication of a project on its environs as equally as important as the technical solutions.

In order to best live up to these principles, it is important that we have a robust dialogue with not only community members and organizations but City officials and departmental subject matter experts whose job it is to reflect and champion the concerns of the community. The intention of such contacts is primarily listening and learning and, as appropriate, adapting the aims and techniques behind a project accordingly. Where such conversations call for communicating the goals and concerns of my clients, I want to make sure that I am only doing so within the confines of a waiver in order to be mindful of the compensated advocacy rule.

In addition to such discussions, it would also be beneficial for the sake of continuity and open dialogue, for me to be able to submit written reports, presentation materials, and drawings to certain City officials and departments on client's projects.

Therefore, I am respectfully asking that a waiver be granted allowing me to communicate on behalf of clients with the following City entities:

- The Port Commission and Port staff;
- The PUC and PUC staff;



Department of Public Works staff;  
The Arts Commission and Arts Commission staff;  
Recreation and Parks staff;  
Mayor's Office of Housing and Community Development staff; and  
Members of the Board of Supervisors and their staff.

For actual appearances before any of the commissions listed above acting as a body, I would agree only to appear under the waiver in cases where other members of my firm were not available. Furthermore, to the degree that it is possible to delegate the responsibility for any of these communications to other employees in our office, I will endeavor to do so, but I believe there will be times where I will be the most knowledgeable member of my firm and therefore the most appropriate spokesperson on the matter.

Finally, I understand the need to maintain the strictest ethical protections when it comes to matters before one's own department and staff that work with the department. Therefore, I am not seeking a waiver to engage in client advocacy to HPC itself or to the Planning Commission and if a particular project of my firm ever came before HPC in the future it would be under the representation of one of my colleagues, and I would, of course, abide by all applicable disclosure and recusal procedures.

As a practitioner at a small firm aiming to continue my professional growth and fully engaged service for my clients, the absence of a waiver could significantly impact my work and could eventually compel me to regrettably forego serving as a Commissioner.

Thank you for your kind attention to my request. Please let me know if I can provide any additional information useful to the Commission's decision.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Hans Baldauf', written in a cursive style.

Hans Baldauf, FAIA, LEED AP  
Founder/Principal