**CONFIDENTIAL**

[date]

[A]

[B]

[Law firm]

Chicago, IL 606

**Via email:**

**Re: Case No. 15032.Q**

Dear [A] AND [B]

You are both currently equity partners in the [law firm] (the “Firm”), and [A] is the Alderman of the City's 51st Ward. . You both explained b that, when [a] becomes an alderman, he will liquidate his partnership interest in the Firm and re-affiliate with it on an "of counsel" basis (through which he would be paid according to the hours he works, as well as origination fees for clients he brings in), or in effect as an associate (through which he would draw a regular salary plus a percentage of the work he brings in).

You said that the Firm has done work for the City’s “sister agencies,” such as the , has represented [sister agencies] , and represented on work, including City [work] .

You have requested advice on how the City’s Governmental Ethics Ordinance (the “Ordinance”) will restrict [A] both as an alderman and as an attorney affiliated with the Firm, and how, if at all, his service as an alderman would affect the Firm itself. I advised you both preliminarily ; this letter will present my advice and discuss the relevant restrictions in depth.

As an initial matter, do note that, as the Board of Ethics has long recognized, nothing in the Ordinance prohibits City aldermen (or employees, for that matter) from engaging in "outside" or dual employment. The Board has also long recognized that aldermen and employees who are attorneys do have, and are not prohibited from maintaining, outside law practices. They do, of course, remain subject to the Ordinance and to various state laws and rules covering attorneys (and elected officials), such as the Illinois Rules of Professional Conduct for attorneys (Article VIII of the Rules of the Illinois Supreme Court, revised July 2010--*see* specifically Rules 1.7, 1.9 and 1.11(d)); the Public Officer Prohibited Activities Act (50 ILCS 105/1 et seq.); and the Illinois Municipal Code 65 ILCS 5/3.1-55-10, et seq.).[[1]](#footnote-1) *See, e.g.* Case Nos. 89103.A; 90035.A; 93048.A; 95011.A; 03027.A; 11045.A; 12048.Q.

Under the Ordinance, the restrictions imposed on [A], and, in certain circumstances, the Firm, are:

1. The “Reverse Revolving Door,” §2-156-111(d). This section prohibits a City employee or official, such as an alderman , from “personally participating in a decision-making capacity” for two years from the date he takes his oath of office (that is, until ), in a matter that “benefits his immediate former employer or immediate former client who … he represented or on whose behalf he acted as a consultant or lobbyist prior to … becoming a City official.” Thus, until , [A] will be prohibited from participating in any City Council committee discussions or votes concerning matters: (i) “benefitting” the Firm, that is, City matters in which the Firm represents the person (or one of the persons) with the matter, or any person who files a City “EDS” (Economic Disclosure Statement) in the matter; or (ii) in which any of his former lobbying clients[[2]](#footnote-2) are parties. To avoid even the appearance of impropriety, we strongly recommend that, as to these prior lobbying clients, [A] not participate in City Council or other City governmental matters involving any client for which or whom he acted as an attorney or lobbyist *throughout* his pre-aldermanic tenure at the Firm, although the Ordinance, literally read, extends that prohibition only to his “immediate former clients.”

[B] asked whether this provision would apply if [A], currently an equity partner in the Firm, upon becoming alderman, becomes an employee of the Firm (put another way, whether the Firm would not then be his “immediately preceding employer,” but his contemporaneous employer, that is, whether the latter status would vitiate or negate the former thereby exempting him from the prohibitions in this subsection). The answer is that this provision would still apply. While the Firm certainly would be [A’s] employer *once he begins* his aldermanic term, it *also* was, undeniably, his immediately *preceding* employer. The intent of this provision is to ensure that City employees and officials do not favor the employer with whom they had an employment or client relationship before joining the City. That risk is still present even if that relationship continues into their City service, albeit on different terms, and even though [A] will be subject to additional conflicts of interest provisions (discussed below) to which non-aldermen would not be subject.[[3]](#footnote-3)

2. Representation of Other Persons, §2-156-090. This section has two relevant subsections.

First, under §2-156-090(a), [A]will be prohibited, as an elected City official, from "representing" or deriving any income or compensation from the representation (by the Firm or directly from his own clients) of any person other than the City in any formal or informal transaction before any City agency, where the City’s action is non-ministerial, that is, where the action involves discretion on the City’s part.[[4]](#footnote-4) This subsection does not prohibit [A]from representing or appearing on behalf of his constituents before a City agency in the course of his duties as an alderman. But, it does mean that he may not represent either the Firm or any of its (or his own) clients in any transaction before any City department, agency or commission (such as, for example, the City Council, Department of Administrative Hearings, Plan Commission, or Zoning Board of Appeals), even without pay, unless that person is his constituent and he is representing the person in his capacity as alderman, without compensation. Were he to sign an appearance form or in effect represent his constituent in a manner that would be construed as practicing law, or receive any compensation from the person or the Firm (or anyone else) for this representation, he would violate this provision. However, we point out here that this prohibition is personal to [A]: other attorneys from the Firm may take on and receive compensation for such representation, provided that a proper fee screening arrangement is established so that [A]receives no direct or substitute compensation from the Firm from its representation in such matters. *See* Case No. 91041.A.

Second, under §2-156-090(b), [A]will be prohibited, as an elected City official, from deriving any income or compensation from the Firm’s representation of any person in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to the City. That is, [A]cannot receive any compensation or, indeed, *anything* of value (such as replacement payments or retirement contributions or profits sharing), from the Firm’s representation of clients in court cases or administrative proceedings (such as matters pending in Cook County Circuit Court, or U.S. District Court, or before the Illinois Industrial Commission), or before an arbitrator or mediator, *where the City is an adverse party, or where the City is a party and the Firm’s client’s interests are adverse to the City’s in the matter*. *See* Cases Nos. 11045.A; 95011.A; 12048.Q.[[5]](#footnote-5)

Do note again, though, that this prohibition in §2-156-090(b) is personal to [A], and prohibits *him* from receiving compensation or anything of value from such matters (and, as noted elsewhere in this letter, his fiduciary duty to the City prohibits him from representing clients *pro bono* in these matters). It does *not* prohibit the Firm from representing or receiving compensation from clients in such matters, provided the Firm and [A] implement a proper, effective screening arrangement, so that [A]: i) personally does not represent the clients in or work on these matters; and ii) receives no compensation or anything of value, including bonuses, replacement payments, profit-sharing, etc. from such matters. *See* Case Nos. 93048.A; 95011.A. Were [A]to receive compensation deriving from such matters, he would violate this provision. For this reason, I advise you that, if the Firm plans on representing clients in such proceedings (such as litigation and/or administrative proceedings where the City is a party), to plan from the outset that [A] be compensated only from those client matters on which he works or earns an origination fee (which, of course, could not be these proceedings). For this reason, an “associate” relationship, in which [A] might draw a regular salary from the Firm’s general revenue and a percentage of the work he brings into the firm, and even his participation in profit-sharing, presents a greater accounting and “ethical screening” challenge than the “Of Counsel relationship,” because you both would need to ensure that none of his compensation comes from matters in which the Firm represents parties with interests adverse to the City’s.

We also note here that any compensation or income he already has or will have earned from any work he performed (or to which he is otherwise entitled, such as profit-sharing) prior to his becoming an alderman is not limited or affected, even if it actually paid to him after [A becomes an alderman.] *See* Case No. 97026.A.

3. Fiduciary Duty. Under §2-156-020, [A]will owe a fiduciary duty to the City. As our Board and Illinois courts have recognized, this obligates him to discharge his public duties as an alderman at all times in the City's best interests, free from and uninfluenced by duties he owes to others, such as private law clients or law partners. *See* Case Nos. 90035.A; 03027.A; 11045.A; see also *Chicago Park District v. Kenroy*, 78 Ill. 2d 555, 402 N.E.2d 181 (1980); *In re Vrdolyak*, 137 Ill.2d 407, 560 N.E.2d 840 (1990); and *U.S. v. Bloom*, 149 F.3d 649 (7th Cir. 1998). Our Board has held that this provision requires aldermen to avoid taking on legal representations that would compromise their ability to exercise their aldermanic responsibilities free from any outside influences or duties (such as the fiduciary duty owed to a law client). In Case No. 03027.A, the Board held not only that an alderman could not represent any clients in judicial or administrative proceedings against the City, but also against City employees or officials (such as individual police officers) for damages allegedly suffered from acts committed by these employees or officials within the scope of their City duties—whether for compensation or on a *pro bono* basis. This prohibition stands regardless whether the City is itself a named party, or, as in that case, the City is contractually obligated to defend against these claims and liable to pay from its treasury any judgment or settlement amounts, or approve any settlement agreements*. See* Case Nos. 90035.A; 03027.A. Again, however, we note that this restriction is personal to [A]: this section does not restrict the Firm from taking on such work, provided the screening arrangement noted in section 2 of this letter is observed, and he recuses himself from such matters in his aldermanic capacity, as described in sections 1 and 5 of this letter.

4. Money for Advice. Section §2-156-142(f) will prohibit [A]from accepting compensation from anyone other than the City, such as the Firm or any of its or his clients, or his constituents, for giving advice or assistance on matters concerning City business, if the matters are in any way related to his aldermanic responsibilities, or are matters that, in his judgment, would come before City Council. This prohibition includes receiving compensation or anything else of value for giving advice even "behind the scenes." As the Board stated in a 1988 case, it prohibits an alderman:

**from accepting any monetary benefit or service of any kind, including campaign funds or voluntary fundraising services, in return for the assistance [given] to persons seeking City contracts. Moreover, this prohibition applies to gifts, favors, or promises made either prior or subsequent to any assistance [the alderman] offer[s] the donor. In other words, the Ordinance would prohibit [an alderman] from accepting any ‘thing of value’ in exchange for assistance on a matter of City business, whether [the alderman accepts] such gifts prior to [the] assistance or in a deferred fashion.** *See* Case No. 88022.A (emphasis in original.)

5.1 Conflicts of Interest; Improper Influence. These are two related sections of the Ordinance, §§2-156-030 and -080. Each has relevant subsections. Sections 2-156-030(a), -080(a) and -080(b)(1) are *in rem* restrictions. They prohibit [A], as an alderman, from making, participating in, or in any way attempting to use his position to influence any City governmental decisions or actions in which he knows or has reason to know that he has a “financial interest distinguishable from its effect on the public generally,” or from which he “has derived any income or compensation during the preceding twelve months or from which he reasonably expects to derive any income or compensation in the following twelve months.” These sections also require an alderman with such an interest to disclose that interest to the Board of Ethics within 4 days (96 hours, actually) of discovering that he has that interest, and then again on the record of Council or committee proceedings, and to abstain from voting on it or take a “Rule 14,” in City Council parlance (but be counted present for quorum purposes).

Assuming that [A]will no longer have an ownership or equity partnership interest in the Firm when he assumes office, he will not have a “financial interest” in the Firm, as that term is defined in §2-156-010(l) of the Ordinance. However, in his proposed relationship with the Firm, as you both explained it to me, he and the Firm will enter into a contract by which he will expect to receive compensation or payment from it for his work on various legal matters. And he has, of course, earned income and compensation from the Firm in the 12 months preceding May 18, 2015. These provisions, strictly read, would prohibit him from participating in or voting only on *matters* or transactions from which he has derived or expects to derive income or compensation in the twelve months preceding and following the vote or action he would take, but not necessarily from all matters involving the Firm. However, as noted above, he is subject to the reverse revolving door provision in the first place, and will need to recuse himself and abstain from participating and voting on all such matters anyway for his first two years. Moreover, the Board has interpreted these sections (and its predecessor sections) broadly in outside employment situations. Thus, we advise that: (i) that [A] must recuse himself––take a “Rule 14”––from any matters before the City Council or any Council committee involving the Firm; and (ii) he and his staff review the records of all matters referred to any City Council committee to determine which matters involve the Firm, and then disclose to my office and on the record of the Council or committee proceedings that he is an attorney serving “of counsel” to the Firm, and will not participate in or vote on such matters.

5.2 Improper Influence/Conflicts of Interests; Appearance of Impropriety. There are two further relevant prohibitions in §§ 2-156-030(b) and -080(b)(2). These are *in personam* prohibitions*.* They will prohibit [A], as an alderman (or as an attorney affiliated with the Firm), from:

(i) participating in any discussions or meetings regarding or voting on *any* City matters (including, of course, City Council matters, but also matters not before the City Council, say, in the Plan Commission, Zoning Board of Appeals, Department of Planning & Development or Department of Buildings) that involve any person with which or whom he has a “business relationship that creates a financial interest,” or from whom or which he has derived or reasonably expects to derive compensation or income in the twelve months prior to or following his action as an alderman; or

(ii) from contacting or directing anyone else to contact any other City employee or official in any City department or agency with respect to such matters.

Assuming [A]will no longer be an owner of the Firm and that he will liquidate his ownership interest in it as he becomes an alderman, then he will not have a “business relationship” with it that “creates a financial interest” in it (financial interest means an ownership interest). However, under these provisions, he will still be required to recuse and abstain from any City Council or other City matters and refrain from contacting or directing anyone to contact other City personnel on any matters or transactions involving the Firm or his own clients for a period of twelve months after he receives any compensation or income from either. This prohibition is already imposed by the provisions discussed above, but we repeat it here because, in [A’s] case, it is also imposed by these two provisions.

What about clients of the Firm that have City matters or transactions on or for which the Firm is not representing the particular client? The Ordinance does not address this. However, consistent with how our Board has advised aldermen in the past, Board staff likewise advises [A]that, to avoid even the appearance of impropriety, he make reasonable efforts to disclose (to us and on the record of City Council committee and meeting records), and to recuse himself from participating in any discussions and abstain from voting on, and to refrain from contacting other City officials or employees regarding, any City matters involving known Firm clients, even if the Firm is not representing that client on those particular matters. *See, e.g.* Case Nos. 12048.Q; 11045.A; 11044.CNS; 07018.Q; 09007.Q.

We note here that, provided [A]liquidates his ownership/partnership interest in the Firm, then §2-156-111(b) will not apply. That subsection provides that "no elected official, or the head of any City department or agency, shall retain or hire as a City employee or City contractor any person with whom any elected official has any business relationship that creates a financial interest on the part of the official ..." Were [A]*not* to liquidate his ownership in the Firm, then it would be *precluded* from becoming a “City contractor,” for example, from providing legal services to the Corporation Counsel or to the City as a client. "City contractor" is defined in §2-156-010(e) as "any person (including his agents or employees acting within the scope of their employment) who is paid from the City treasury or pursuant to City ordinance, for services to any City agency ..."

6. City-owned Property; Confidential Information. Finally, I advise [A], that, as in all cases in which City employees or officials wish to pursue outside employment, business activity or professional practice, he is prohibited from engaging in or permitting the unauthorized use of City-owned property, and from using his City title to benefit purely a private interest (such as the Firm’s or its clients’), and from using or disclosing confidential information gained in the course of or by reason of his position as an alderman. *See* §§ 2-156-060; -070. To avoid even the appearance of impropriety, I advise that he refrain from mentioning his aldermanic position when courting potential clients (including on your Firm business cards, of course), or when dealing with opposing counsel or other non-Firm attorneys.

**Conclusions.** As described in detail above, [A]is not prohibited by the City’s Governmental Ethics Ordinance from re-affiliating with the Firm. But he is subject to the prohibitions and restrictions in §§ 2-156-030; -060; -070; -080; -090; -111(d); and -142(f) of the Ordinance, and he and the Firm do need to establish proper activity and fee-screening arrangements. In general, we advise [A]to represent and perform legal work only for the Firm’s clients who do not seek City contracts or have matters that will go before City Council, and to avoid taking on any representation or matters that involve litigation in which the City is a party, and advise the Firm that, if it takes on such matters, it ensure that a proper ethical screen is established so that [A]does no work on these matters, and receives no income or compensation (including profit-sharing) from them.

Our conclusions do not necessarily dispose of all the issues relevant to this case, but are based solely on the application of the City’s Governmental Ethics Ordinance to the facts stated in the opinion. If those facts are inaccurate, please notify us, as a change in facts may change our conclusions. Board staff also notes that other state or City rules, regulations or laws may apply to this case, and advise you to seek private counsel to ensure your compliance with them.

I appreciate your conscientiousness, and wish [A]every success.

Please contact me with any questions or follow-up requests for guidance.

Yours very truly,

Steven I. Berlin

Executive Director

1. Our Board has no authority to interpret or advise you with respect to how these statutes and rules may apply here. [↑](#footnote-ref-1)
2. As I advised you both on May 12,[A] should terminate his lobbyist registration with our agency immediately, before beginning his term as alderman. [↑](#footnote-ref-2)
3. See Recommendation 19 of the Report of the Chicago Ethics Reform Task Force, which states: “a person cannot ‘un-learn’ what he already knows about his former employer and its current business practices... Relying on this type of insider information raises a host of potential legal issues … and also invites improper contact between the company the new City employee. A reverse revolving door eliminates these concerns by preventing a new employee or official from working on matters relating to his previous employer for a specified period of time.” [↑](#footnote-ref-3)
4. The Board has interpreted the term “represent” to include a broad range of activities in which one person acts as a spokesperson for someone other than the City, and seeks to communicate or promote the interests of that party, such as attending or speaking at face-to-face meetings, making telephone calls, sending emails or signing documents submitted to a City department. *See* Case Nos. 90035.A; 97026.A; 97061.A. [↑](#footnote-ref-4)
5. Read literally, this provision would not prohibit [A]from representing clients in such proceedings or cases on a *pro bono* basis (from which he would not derive any direct or indirect compensation from the client or the Firm). However, as discussed below, our Board has held that an alderman’s fiduciary duty to the City prohibits even the *uncompensated* representation of clients in judicial or administrative proceedings against the City. *See* Case Nos. 90035.A; 03027.A. Thus, the Ordinance requires [A] to forego even such *pro bono* representations. [↑](#footnote-ref-5)