

**Advisory Opinion**  
**[Tom Jones]**  
**Case No. 04006.A, Post-employment**  
**April 7, 200**

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You were employed in the City's Department of [D], in three positions, from September 199 through February 20, . Since March 1, 200 , you have served as Executive Director of the Council ("C"), a position you accepted on January 30, 200 . On February 10, 200 , you requested a written advisory opinion addressing how the City's Governmental Ethics Ordinance restricts your post-City employment with the C.<sup>1</sup> As discussed in this opinion, the Board has determined that for one year after you left City service (i.e. until February 20, 200 ), you are prohibited by law from assisting or representing any person, including the C or its members or committees, with respect to: 1) any ongoing or proposed real estate development or redevelopment projects in the P Area (this prohibition is permanent as to the four specific projects listed on pp. 13-14 of this opinion, and includes specifically the activities listed on page 12 of this opinion); and 2) economic development, marketing, and retail and corporate recruitment in the area served by the C—if and to the extent this assistance or representation entails interacting with personnel, services or programs from the D or any other City agency (this prohibition includes specifically the activities listed on pp. 12-13 of this opinion). The Board also determines the Ordinance's post-employment provisions do not prohibit you from assisting or representing the C in performing the functions listed on p. 11 of this opinion, pursuant to the C's contract with the City, through Special Services Area (SSA ). The Board's analysis, and a detailed discussion of the responsibilities you are and are not prohibited from performing, follow.

**FACTS:** The Council. The C is an Illinois not-for-profit corporation with about 150 members. According to its website, its mission is "to strengthen the [E] Street district's [bounded, roughly, by the alleys east and west of E Street, and N and W Drives] competitive position as a mixed use retail core; build on its existing hospitality, cultural and institutional resources; and contribute to Chicago's standing as a world-class city and tourist attraction. [Its] goals are achieved through promotional events, education, advertising, watchdog groups and committee work." "Background information" for the description for your position (which you provided; it is attached as Appendix 1), contained in a document the C prepared, states that the C achieves its mission "by organizing and hosting promotional events [including an annual meeting and luncheon, Memorial and Thanksgiving Day Parades, a Gala with silent auction, Halloween activities, Christmas caroling, et al.], advertising, oversight groups and committee work." It has a staff of 3, including you, and a Board of 42 Directors, including an employee of the [City]

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1. You first contacted our office with respect to the C position on July 29, 2003, by phone. After you discussed the position and your City responsibilities with Board staff, you were advised that, although the Ordinance did not *per se* prohibit you from taking this position with the C, Board legal staff's view was that the Ordinance's one-year prohibition could seriously limit what you could do for the C. Board legal staff also advised you, on August 4, 200 , to seek a formal Board opinion if you wished to pursue the position. You next contacted our office in February 200 .

. The Board meets quarterly. Just over half its members sit on the Executive Committee, which meets monthly.

As explained below, the C stands in a contractual relationship with the City and SSA . The C derives approximately \$1.05 million of its \$1.6 million operating budget from funds generated through a special tax levy assessed by SSA ; the rest comes from promotional events and membership fees. SSA designations, which are authorized by Illinois law (the Special Service Area Tax Law, 35 ILCS 200/27-5 et seq.), are made through a City program that allows for a tax to be assessed on local industrial, commercial or residential property owners to fund additional City services such as increased security, marketing, advertising, parades, festivals, and smaller capital improvements. All City SSAs are serviced through the D, except SSA , which is serviced through the Department of A . Each has its own Public Commission, whose members are appointed by the Mayor and confirmed by City Council. The members the Public Commission for SSA (the SSAC) include the City's B , Q , D and A Commissioners, and the Commander of the Police District. Other Commissioners represent local property owners and businesses. The SSAC meets monthly. The C's Executive Director attends all SSAC meetings, but is not accorded voting status.

By City Ordinance (enacted in July 1977, and amended in 1993, 1994 and 1996), the SSAC for SSA is authorized by the City to recommend: 1) the annual tax rate levied on resident businesses; 2) an annual budget for the additional services to be provided; and 3) a sole service provider that will enter into a contract with the City and the SSA to provide those services. The Ordinance also authorizes A 's Commissioner to enter into a contract with that provider. Accordingly, the current contract between the City/SSAC and the C (which you provided to the Board) is dated June 10, 200 , for a term equal to calendar year 200 . The agreement is currently being extended through 200 ; you anticipate that the document reflecting the 200 agreement will be signed in June 200 , and that the C's Chair will sign it, as he has in agreements pre-dating the current one. The agreement's signature page indicates that the SSAC's Chair has recommended the agreement between the City (through the signature of A 's Commissioner) and the C (through the signature of the C's Executive Director, your predecessor in the position).<sup>2</sup> In the body of the agreement, the C is designated as the "contractor," and is obligated, under Section 3.01 ("Scope of Services") to provide the services described in the contract and in Exhibit 1 to it.

In summary, Exhibit 1 (attached to this opinion as Appendix 2) obligates the C to plan, develop, market, implement, encourage members to participate in, and manage special events such as street entertainment and seasonal and holiday events, and maintain the sidewalks, street planters and other landscaping. You said that, in your view, this agreement is all-inclusive—it lists or envisions, in the Scope of Services, the entire set of obligations that the C has to the City and the SSAC (though it does not delineate details as to how those services will be implemented). Section 3.06 of the agreement obligates the C and any subcontractors it hires to report at least semi-annually to the SSAC, and also requires the C to keep its records open for City inspection and auditing. Section 3.07 of the agreement provides that the C "shall not assign, delegate, subcontract or otherwise transfer all or any part of its rights or obligations under this Agreement or

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2. In addition, Article 9, "Notices," provides that all written notices required by the agreement may be delivered to the C as contractor by sending it to the attention of C's Executive Director; notices to the City may be delivered to the SSAC Chair, and to the A Commissioner.

any part hereof, unless otherwise provided for herein or without the express written consent of the SSAC.” Jane Roe, a Director in A, explained to Board staff that A is the primary City department interacting with both the SSAC and C, and the contract itself is prepared by A (together with the Law Department) and presented to City Council by the Mayor through A’s Commissioner. She said that the C has wide latitude in selecting sub-contractors to perform the services required of it under the contract, and that C submits all invoices from subcontractors (paid out of the SSA budget) to A for processing and payment through the Department of Finance. D, she said, is not involved in this process.<sup>3</sup>

According to the job description you provided the Board for your position (Appendix 1 hereto), and what you told Board staff, the Scope of Services attached to the agreement also encompasses (though it does not delineate in detail) more routine C functions, which you and the C staff perform. These require you and other C staff, on behalf of the C’s members, to interact from time to time directly with City personnel (typically, you said, from A) regarding infrastructure repairs, e.g. to street lights, sidewalks, tree grates, etc., as well as meet with Aldermen about sidewalk café licenses and personnel from the Departments of the N or L about noise or crime issues, and monitor maintenance of news kiosks and provide members with direct contacts at City Hall to discuss matters that arise concerning City services.

However, the section of Appendix 2 entitled “General Functions of the Executive Director” lists approximately twelve broader responsibilities, including: membership development; strategic planning; consensus building and creating partnerships between the Board, the SSAC, the City, members, and other civic organizations; marketing in conjunction with the Marketing Committee, including conceptualization and execution of major events, networking meetings, and member activities; economic development and redevelopment; real estate development and planning; representing the interests of the Council at meetings and events held by the City and/or other organizations; negotiating contracts; preparation of budgets; soliciting sponsorships; and producing publications. You said that you believe that one of your key duties as C’s Executive Director is to develop its membership, as it is a membership-based organization. You anticipate that the majority of your time (about 95% of it, you said) will involve member relations and development, and event-oriented activities—hiring contractors such as florists and landscape designers, designing (or approving), procuring, installing and removing parade and street banners, hiring graphic designers for, printing and distributing materials for special events and promotions, event planning, and washing and maintaining subway kiosks and cultural walk boards.

You also explained that, consistent with the C’s mission and your job responsibilities, C staff and many of its individual members, engage in efforts to market the E Street area in order to attract marquis-name retailers. For example, you convened a meeting in mid-March of developers and brokers (including some C members) planning to attend the upcoming annual convention of the International Council of Shopping Centers in Las Vegas. (You said that this convention is the most important opportunity for municipalities and commercial brokers to meet with retailers to inform them of expansion opportunities, and relocation or expansion deals are often begun there.) In attendance

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3. The C “front-ends” its contractual expenses, that is, it pays for the services it uses (such as power washing) directly, and then seeks reimbursement from the City/SSA 1 through the supplemental tax levy funds. Funds from the Central Loop tax increment financing district (TIF) are not used. City departments, such as Streets and Sanitation, typically provide the C with the names of their own contractors, but all entities wishing to provide services to the C go through a competitive bid process administered by the C; DPD is likewise not involved in that process.

at this meeting, at your invitation, was the Assistant Commissioner from D who manages the City's Retail Chicago Program.<sup>4</sup> The purpose of the meeting, you said, was to spearhead an approach (which you described as more "holistic") to "purveying" E Street to retailers nationwide. D maintains statistics relevant to that effort, including information on foot traffic, numbers of students residing there, etc. Your role will be to assist in creating this new approach, and review any written materials that may be produced. You said that you do not anticipate meeting with representatives from potential new retailers, however—that function, as well as negotiating any leases, will be handled by brokers representing the owners/lessors and retailers. But you said you might be asked to assist in the effort by explaining the services that the C offers, and by facilitating communication with D or other City personnel about financial assistance the City may offer, or about City assistance in securing required building or construction permits, etc. You said that the C is not involved in recruiting other, non-retail businesses to the area (e.g., to occupy office space there); those efforts are handled by individual property owners and commercial brokers they retain for that purpose.

Your City Service. You began City service in September 199 , as a Financial Analyst in D's I Division. In late 199 , you were promoted to the position of Coordinator in that division. In these positions, you said, you worked on approximately 20 separate I projects located throughout the City, mostly performing financial analysis (i.e. estimating tax revenue streams, construction budgets and lease revenues), monitoring the progress of D-sponsored construction occurring within I districts in the area, and helping to assure that the City's targets and timetables were being met on those construction projects. You said that, during this period, the only I-related projects on which you worked that were physically located in the area were the project to restore the O Building at E Street (which now houses retail store), and the relocation of CV to E Street. The CV project, you explained, involved an atypical three-part contract between the City, CV (as tenant), and the building's owner (as landlord). You assisted your Deputy Commissioner in negotiating the \$13.5 million package of I-based financial incentives that the City provided to CV (which went toward paying for public infrastructure improvements such as street lighting, landscaping perimeter sidewalks and other streetscape components), and in negotiating with tenants in the building to buy out their existing retail leases so that CV could occupy the space. That project, however, is nearly five years old, and you said that you do not anticipate any lingering issues arising in the future.

In December 199 , you were promoted to Assistant Commissioner for the City's TR Area, and became the O Area Project Manager. You now had responsibility for managing and facilitating real estate development in the O area (bounded, roughly, by KR Drive, C Avenue, GH and IO Streets). This area encompasses the entire district served by the C. As with any D area Project Manager, for your area you identified redevelopment opportunities and communicated them to the real estate and business communities generally, evaluated and negotiated requests from potential developers for City assistance, including zoning and permitting issues, and guided projects through City Council. In addition, you worked on more extensively on the City's acquisition

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4. According to DPD's website, this program represents the City's effort to inform developers about retail market opportunities throughout Chicago, coordinate the City's participation in the development process, and strengthen and stabilize existing neighborhood retail centers. Services offered under the program (available to developers, retailers and others interested in retail opportunities in the City) include centralized project management, customized market information on specific development opportunities, and assistance in coordinating developer and neighborhood needs. You said that the individual who runs this program is the City's key retail consultant.

and sponsored redevelopment of the following sites: DF1 \_\_\_\_\_), DF2 \_\_\_\_\_, and two projects of a C member, JK \_\_\_\_\_ Properties, LLC (JK \_\_\_\_\_): the DF3 \_\_\_\_\_ and DF4 \_\_\_\_\_. This work included negotiating the sale price from the previous owners, reviewing Requests for Proposals (RFPs) or Requests for Qualifications (RFQs), negotiating with the re-developer the purchase price (or any I-based financial assistance), and details such as placement of entrances, architectural features and public benefits.

On the DF1 \_\_\_\_\_ project, you were appointed by D's Commissioner to serve on the eight-person committee that drafted the RFQ for project development teams, and then evaluated the ten responses submitted. The RFQ was, in effect, a national campaign to solicit a development team for the project, and it laid out, to the extent possible, the City's vision for a mixed-use project. The RFQ, you explained, was drafted to represent the City's commitment to the ultimate design of the project; there will be no RFP for this project. In June 200 \_\_\_\_\_, the committee chose a team put together by KDA Corporation (KDA \_\_\_\_\_) (also a C member) to develop the site. Part of your work in the project was to evaluate the proposed merchandising plan for DF1 \_\_\_\_\_ (i.e., which retailers go in—no plan has yet materialized), as well as attend meetings with D and KDA \_\_\_\_\_ personnel to discuss planning details, such as how many entrances the development would have, where they would be placed, how the building would accommodate the pedway underneath it, and the appearance of the development's four separate faces. The process to formalize these details, as well as a time line for the project, were incorporated into a Memorandum of Intent. You said, and your former supervisor, D Deputy Commissioner Tony Roma \_\_\_\_\_, confirmed, that you helped to author this Memorandum. You also met on several occasions with representatives from the Chicago Transit Authority regarding a station at the site, and analyzed statements projecting tax revenues and the costs to the City of a mixed-use development there. You said that, at the time you left City service, the KDA \_\_\_\_\_ team had not yet put forth any specific designs, though general plans had been discussed at meetings with KDA \_\_\_\_\_ representatives and other D personnel, which you attended. These guidelines were also summarized in the Memorandum of Intent. Ms. Roma \_\_\_\_\_ said that you also attended several meetings at which the value of the land and City financial assistance was discussed, and that you helped her prepare the pro forma and the term sheet for the project. Both of these documents form the essential components of the project, describing the concept, number of stores, and certain financial details; the latter document actually becomes incorporated into the final redevelopment agreement. Work on negotiating the final redevelopment agreement and financial details began after you left City service, but you said that you would likely have been involved in those negotiations. The redevelopment agreement will be a 50-60 page document that outlines the financing arrangements and final purchase price, WBE/MBE requirements, et al., but, Ms. Roma \_\_\_\_\_ said, the overall concept and financial terms for the development had already been determined and embodied in the RFQ, term sheet and Memorandum of Intent.

In September 2003, the City announced that the DF2 \_\_\_\_\_ would be sold to TCA \_\_\_\_\_ (also a member of the C). You said that you had helped draft the RFP that TCA \_\_\_\_\_ and two other firms answered, served on the committee that evaluated the responses, analyzed the responses' economic impact on the value of the property and surrounding area, and reviewed the scope of work (prepared by the City's Department of SQ \_\_\_\_\_ and D's LJ \_\_\_\_\_ Division) of critical repairs the City agreed to make before conveying the property. You then prepared a written report and presented it orally to the Community Development Commission (CDC), recommending that it approve both the conveyance to TCA \_\_\_\_\_ and the subsequent agreement and financial assistance package.

On the DF2 project, you served on the committee that, in late 200 , evaluated the three responses submitted to the RFP that D issued (although that RFP had been completed before your work on the project commenced), and selected JK . As D's Project Manager during the selection process, you began negotiating the term sheet to which JK , the developer, ultimately agreed. In addition, you attended several meetings with other D and JK personnel where the retail and residential plans were discussed.

Much of your work as Assistant Commissioner/O Area Project Manager (from December 199 through mid-200 ), you said, and Ms. Roma confirmed, involved retail and corporate retention and recruitment. That is, you were the lead City employee responsible for promoting development of the E Street area by attracting retailers (specifically, unique, Chicago-specific smaller retailers) to E Street, and to encourage other, non-retail businesses to relocate to office space there. You said that, when you started in December 199 , about 40% of your work involved retail recruitment and retention, but this activity began to subside in the fall of 2001, and had largely stopped by late 2002; the City's corporate recruitment efforts, on the other hand, have not subsided, and continue with Ms. Roma . You operated the City's "O " retail recruitment program, which was begun under your predecessor at D, but was discontinued in 200 because it was unsuccessful in attracting any retailers to the area. In this role, you wrote letters to or met with dozens of restaurants and retailers, asking them to consider the E area, and were the City's primary liaison to the retailing community, local property managers, real estate brokers and developers, Aldermen and the C (see below) regarding opportunities and marketing in the O Area. Your goal—and D's—was to keep these parties apprised of locations becoming available for purchase or lease and those being re-configured for retail or office space, and to serve as the "point person" or first contact (Ms. Roma 's words) in communicating information to developers and businesses about available buildings and spaces, and financial incentives the City could offer (including low-interest loans, assistance with permit review and approval, and improvement and maintenance of signage and building infrastructure), and to help to match property owners with potential tenants.

About 10-15% of your time during this period, you estimate, was devoted to corporate recruitment and retention. From time to time, you said, the City became aware of companies considering relocating to or from Chicago. Your job was to coordinate the City's efforts with those of Business , and to create the universe of possible buildings and spaces in which businesses might move. For example, you said, when the INC and UY Corporations were considering relocating their headquarters (the former into Chicago; the latter out of it, which it has decided to do ), you went through a database (provided to D for a fee by a real estate service) of buildings, and identified those in I areas that might be appropriate and submitted the list to your Commissioner and to the Mayor's Office, and attended regular monthly meetings regarding corporate retention efforts in the O area and meetings with INC and UY representatives. Typically, you said, you would refer representatives from these and other companies to other D divisions—notably the Business Express division—for assistance in tracking the progress of any building and zoning permits connected to relocations.

From December 199 through January 200 , you also served as D's liaison to the C and SSAC. Although, you said (and Ms. Roe confirmed), you were not involved in drafting, negotiating or interpreting the various City/SSAC/ C contracts, or in the procedure by which C submitted invoices to the City for reimbursement, or in providing or coordinating routine City services to the SSA or C, you did, in your capacity as D 's O Area Project Manager, attend 70% of the monthly and quarterly meetings of each board. The purpose of your attendance, you said (and Ms. Roe

confirmed), was to keep both boards apprised of the progress of ongoing real estate and retail and other marketing and recruitment developments in the area. You stated that you were typically slotted early in meeting agendas, and would make a brief oral report to the Commissioners in attendance (sometimes, you e-mailed your report in advance) on the status of specific real estate projects in which D was involved, e.g. the number of RFQ/RFP responses received, who was on the short list, when the next phase was expected to be completed, which retailers were considering space, etc. Occasionally, you said, you attended other portions of these meetings, but as an observer. To your knowledge, representatives from other City Departments, notably A, attend these meetings and receive suggestions and requests from C and SSAC members regarding City services such as street and tree grate repairs, representatives from the Police Department report on crime trends and statistics, and, from time to time, representatives from the Departments of F, M and the Mayor's Office of Special Events report on street festivals, holiday programming, lighting issues or clean-up efforts.

You said that, in your experience, C members are interested mostly in receiving information about ongoing D developments and how they affect the area generally. The C, you said, typically does not seek to influence ongoing D projects or to advocate before D personnel for particular outcomes, although, you pointed out, the C and/or certain of its members have taken special interests in the status of projects involving buildings near their own businesses. With respect to DF1, you said, the C has taken the position, though not formally announced, that the development should contain a cinema; this position is in opposition to the City's vision for the project (as embodied in the RFQ and Memorandum of Intent). Along with other groups, such as the SSAC, the RF Development Committees, the C will be asked to provide a Letter of Support for the Project, you believe sometime in the next year.

**LAW AND ANALYSIS: I. Post-employment.** Section 2-156-100(b), "Post-Employment restrictions," states, in relevant part:

**No former ... employee shall, for a period of one year after the termination of the ... employee's ... employment, assist or represent any person in any business transaction involving the City or any of its agencies, if the official or employee participated personally and substantially in the subject matter of the transaction during his term of office or employment; provided, that if the official or employee exercised contract management authority with respect to a contract this prohibition shall be permanent as to that contract.**

This section imposes both a one year and a permanent prohibition on former City employees' activities. The Board will analyze your situation under each.

A. One-Year Prohibition. Under the first clause of § 2-156-100(b) you are, as a former City employee, prohibited for one year after leaving City service from assisting or representing any person (including the C or any of its committees or members), in any business transaction involving the City if you participated personally and substantially in the subject matter of that

transactions as a City employee.<sup>5</sup> Accordingly, we first assess whether there are “business transaction[s] involving the City” on which you have been asked to assist C, then their “subject matter,” and finally, whether you “participated personally and substantially” in those subject matter[s] during your City employment. You will be prohibited by law from assisting or representing any person in those transactions for one year if they involve the City, and you participated personally and substantially in their subject matter.

1. Business Transaction[s] Involving the City.

i. The C/City/SSA Agreement and Membership Development. The contract between C/City/SSA is the operative document that, in effect, gives the C its charter and mission. Many of the routine tasks C performs (and thus many of the routine, day-to-day responsibilities you have as C’s Executive Director), are pursuant to, if not explicitly detailed in, that agreement. While the agreement does not delineate specific decorations and how street festivals will look, it obligates C to provide them, and prohibits the C from subcontracting any of its contractual responsibilities without the SSAC’s express written consent. Likewise, the agreement does not specifically list membership development and services as a contractual obligation of C, but the C’s website states that “membership benefits include the opportunity to network with key government, business and cultural leaders; [and] a direct line of communication with local city government ...” Moreover, Appendix A (the Executive Director’s position description) lists membership development as one of the Executive Director’s general functions; in fact, it is the first listed function. You indicated that membership development serves as a primary method of allowing the C to perform its responsibilities more effectively—the greater and more active the membership, the more complete will be the C’s ability to serve the entire E Street community and fulfill its obligations to SSA . For these reasons, the Board concludes that the first aspect of your work as the C’s Executive Director, including but not limited to: 1) membership development and relations; 2) event planning and decorations; 3) direct communications with City personnel on behalf of members regarding City services; 4) street maintenance; as well as 5) budget and contract reimbursement matters, are performed either with the goal of assisting the C in its contractual obligations to the City, or of furthering members’ opportunities to network with key City government personnel. Thus, this aspect of your work constitutes a business transaction involving the City.

ii. Real Estate Development in the C Area; AND iii. Economic Development, Marketing, Retail and Business Recruitment. Likewise, proposed and ongoing real estate development projects in the O And E areas, including those addressed specifically in this opinion, proceed (and would not proceed without) with substantial City involvement or City action, including, sometimes, I - based financial assistance, redevelopment agreements, assistance with respect to permit expedition, building location, zoning approval etc. In addition, the City is concerned with the continued economic and development of the area generally; its services continue through its own E Street and O area marketing and retail and business recruitment efforts, the Retail Chicago and Business Express programs, and through the making of departmental personnel available to businesses, brokers and property owners to assist in dealings with other City departments, identify

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5. Note that this prohibition begins on the date City employment ends, not on the date an employee stops participating in specific projects or transactions. Case No. 94011.A, p. 7. “Assisting” or “representing” a person in business transactions involving the City encompasses helping a person to seek or to perform a contract or project. See Case Nos. 96001.A, 92035.A. “Representation” applies to activities in which someone acts as a spokesperson for another or seeks to communicate and promote the interests of one party to another. It includes signing any proposals, contracts, or other documents. Case 93005.A, p. 7.



available properties, report to the SSAC and the C, etc. You anticipate that much of your work will be to assist the C in performing its contractual obligations to the City and to develop its membership. Nonetheless, the Board concludes that, if you contact D or other City personnel about, or advise C, its members or others about ongoing or proposed real estate developments that are directed toward or would reasonably be expected to lead up to City action, you will be advising or assisting persons on business transactions involving the City. Similarly, the Board concludes, if you contact D or other City personnel about, or advise C, its members or others about marketing or retail or business development and recruitment efforts involving City personnel, assistance or programs, you will be advising or assisting persons on business transactions involving the City.

In either event, the law prohibits you from engaging in these activities for one year if you participated personally and substantially in the subject matter of those transactions.

## 2. Subject Matter.

i. The C/City/SSA Agreement and Membership Development. In several prior cases, the Board has applied the one-year prohibition to former employees asked to assist their new employers on work defined by specific City contracts which those employers had under City programs (in those cases, it was the New Homes for Chicago program). See Case nos. 96001.A and 96024.A. In both cases, the Board concluded that the subject matter of the transactions on which those former employees would work was the projects themselves, i.e. the performance of work to complete specific projects or contractual duties under the program. This approach is appropriate here, because the scope of C's work, as incorporated into the C/City/SSA agreement, in effect defines much of your job description, and supervising the performance of that agreement is a major responsibility of yours. While the C's role in this respect, and thus yours, necessarily entails a myriad of interactions with City personnel from different departments and agencies on various topics, including coordination of events that may require City assistance, provision of City services to members, budget and sub-contract matters (which could themselves be characterized as business transactions involving the City, each, potentially, with its own unique subject matter), as well as interactions with member businesses and C vendors and membership development, the overarching subject matter of these interactions—the reason why it is C that is having them—is performance of the C/City/SSA agreement. Thus, the Board concludes (following its reasoning in Case nos. 96001.A and 96024.A) that the subject matter of this aspect of your work, i.e. assisting the C to fulfill its routine, day-to-day contractual obligations to the City as described in the Scope of Services attached to its City/SSA agreement, is the performance of that agreement, pursuant to the Ordinance adopted by City Council in conformance with Illinois law.

ii. Real Estate Development in the C Area. However, another aspect of your work for the C, as delineated in Appendix A, the written job description for the Executive Director's position prepared by the C, is "real estate development and planning," that is, advising C members, its committees or others (such as developers) as to ongoing or proposed real estate developments in the area that are directed toward or would reasonably be expected to lead up to City action. As the Board has already concluded, this work will constitute assisting or representing persons in business transactions involving the City. Following past advisory opinions, the Board concludes that the subject matter of this aspect of your work as the C's Executive Director is, broadly, real estate

development in the O area (which includes the area served by the C). See Case nos. 94014.A, p. 14; 99044.A, p. 5; 01047.A, p. 8

iii. Economic Development, Marketing, Retail and Business Recruitment. A third aspect of your work for the C, as delineated in Appendix A, the written job description for the Executive Director's position prepared by the C, is "marketing," "economic development and redevelopment," and "representing the interests of the Council at meetings and events held by the City and/or other organizations." As the Board has already concluded, the subject matter of any representation you perform on behalf of, or assistance you would render to the C, any of its members or any other persons in this area is—if it entails or necessitates your interaction with City personnel, assistance or programs and therefore a business transaction involving the City—economic development, marketing and retail and business recruitment for the area served by the C.

It now remains for the Board to address whether you participated personally and substantially in each of these three subject matters during your City employment.

### 3. Personal and Substantial Participation in Those Subject Matters.

i. The C/City/SSA Agreement and Membership Development. It is clear that, in your more than seven years with the D, you worked, to varying degrees, on dozens of real estate development projects in the O Area (which encompasses the area served by the C), and on financial analysis of I projects City-wide. However, the issue the Board addresses in this section is not whether you are prohibited from advising or representing developers or others with respect to giving advice about or securing I-assistance or other City action for proposed or ongoing real estate developments in the O area (though the Board will address that issue later in this section). Rather, the issue is whether you were personally and substantially involved in one of the aspects of your current work, viz., the performance by the C of its contractual obligations to the City as described in the Scope of Services attached to its City/SSA agreement. While you attended the majority of the meetings of both the C's and SSAC's Directors, and became familiar with the C's role and its (and its members') interests in real estate development in the area generally, and in some real estate developments in particular, the facts presented show that you were not involved in the day-to-day business of the C, including membership development, coordinating City services and streetscaping projects, putting on E Street events and holiday festivals, promotions, advertising, the SSA supplemental tax levy or C contract reimbursements. Your work directly with the C and SSA was to serve as a portal for facilitating information exchanges between the City and the C (and its members) regarding ongoing and proposed real estate developments. While receiving current information about real estate development projects and their status is clearly important to the C and its members, the Board cannot equate that interest (and the providing of such information) by itself to the scope of services that C provides under its agreement with the City/SSA. Thus, the Board concludes, your participation in these meetings, and in providing this information, as well as your work on real estate developments generally, does not constitute personal and substantial participation in the performance of the following contractual obligations that the C has to the City/SSA, as described in the Scope of Services attached to its City/SSA agreement, viz.: 1) planning, implementation and managing special events, seasonal events, galas, and landscaping maintenance; 2) vendor participation; 3) contracts for entertainment and production; 4) developing publicity campaigns; 5) designing, contracting for, installing and removing banners; 6) designing and printing materials for events, and advertising; 7) advertising generally; 8) providing legal counsel; 9) attending C and SSAC meetings (except as discussed below in

subsections ii. and iii.); 10) cleaning kiosks, walkboards and planters; and 11) other general and routine functions of the Executive Director and C as delineated in the job description you provided the Board, including 12) membership development; and 13) managing C's budget and contractual reimbursements processed through A. The Ordinance thus does not prohibit you from performing these functions as the Executive Director of the C.

ii. Real Estate Development in the O Area. As D's Assistant Commissioner and O Area Project Manager between December 199 and January 200, your involvement in ongoing and proposed real estate redevelopment projects in the O area—most notably DF4, DF2, DF1 and the building at DF3—was extensive. As discussed above, in two past cases, the Board has applied the Ordinance's post-employment restrictions to employees who shared your title and responsibilities for various planning districts in the City. In both cases, the Board concluded that the subject matters in which these employees participated personally and substantially was "real estate development in [the districts] in which [they] were responsible." See Case nos. 99044.A, p. 5; 01047.A, p. 8. The Board therefore determined that these former employees were prohibited, for one year after leaving City service, from assisting their new employers on business transactions involving the City or any of its agencies (such as the CDC, Zoning Board of Appeals or Plan Commission), if those transactions entailed real estate development in the specific areas or districts.

The facts presented here (i.e., your responsibilities as an Assistant Commissioner and O Area Project Manager), and Board precedent warrant the conclusion that, during your City employment, you were personally and substantially involved in real estate development in the O area. Thus, although you anticipate that the bulk of your work will be in performing other services for the C, the Board concludes that the Ordinance prohibits you, for one year after you leave City service (i.e. until February 20, 200) from assisting or representing any person, including the C or any of its members, as to any ongoing or proposed real estate development projects in the O area. This prohibition includes, but is not limited to, consulting with or representing the C or its members about any ongoing or proposed real estate developments in the area served by the C that involve, are directed toward, or would reasonably be expected to lead up to City action. Such representation would occur, for example, during your attendance at those portions of C or SSAC Board meetings where your D successor reports on the status of ongoing projects), or meeting with D, Department of Zoning or City Council personnel about ongoing projects or proposed developments. It also includes privately advising prospective developers or C members about, or communicating on their behalf with City personnel from D or any other City agency (such as, for example the

) about, any ongoing or proposed real estate project that is directed toward or would reasonably be expected to lead up to City action, such as matters discussed at C or SSAC Board meetings where D personnel report on ongoing or proposed developments, formulating Letters of Support, reviewing or discussing proposals, RFP or RFQ requirements or responses, procuring I funds or other City financial assistance, approval of merchandising plans (such as, for example, which retailers or businesses might occupy space in DF1), or architectural details such as entrances and face appearances. Thus, the Board advises you that, while your mere presence at those parts of meetings where these matters are discussed, without any active participation, is not "representation" within the meaning of the Ordinance, you are prohibited from sharing any of your insights or advice about these matters with, for example, any C members, committee or any prospective developer. Therefore, the Board advises you to be absent during those portions of

meetings where matters pertaining to ongoing or proposed real estate developments in the area are discussed.

The Board that this one-year prohibition does not, however, include communicating with personnel from City departments such as A , R or the U about vendors, festivals, repairs, streetscaping or other projects affecting the C or its membership generally, even though the subject of those communications may relate to City services or events occurring in the space in front of ongoing development sites.

iii. Economic Development, Marketing, Retail and Business Recruitment. You served for over 3 years as D's O Area Project Manager, as operator of the "O" program, and as the City's primary point of contact for attracting or retaining retail and other businesses to the O area (comprising the area serviced by the C). The facts presented here warrant the conclusion that, as a City employee, you were (for three years, the lead City employee) personally and substantially involved in managing the City programs supporting and providing City assistance regarding the marketing of the area served by the C as a retail and business location, and for economic development in the area generally. Therefore, the Board concludes that you are prohibited, for one year (i.e. until February 20, 200 ) from representing, assisting or even informally advising the C, its members or any other person with respect to economic development and retail and corporate recruitment in the area served by the C—if that representation, assistance or advice entails or necessitates your interaction with City personnel, assistance or programs. This prohibition includes, but is not limited to, arranging or attending meetings with D or other City personnel (such as those who manage the Retail Chicago program), at which marketing strategies for the area covered by the C are discussed, as well as contacting City personnel on behalf of retailers or other businesses about financial, permit, signage or other assistance or services the City can offer in furtherance of the recruitment or relocation efforts.

B. Permanent Prohibition. Under the second clause of § 2-156-100(b), you are permanently prohibited from assisting or representing any person (including the C or any of its members) with respect to any City contract if you exercised "contract management authority" over that contract during your City service. "Contract management authority," defined in § 2-156-010(g),

**means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract, including without limitation the preparation of specifications, evaluation of bids or proposals, negotiation of contract terms or supervision of performance.**

Based on the facts presented, the Board concludes that your work on the specific projects you identified, and your efforts with respect to promoting the O area generally—while having the effect of contributing to the overall revitalization of the O area, and thereby aiding the C in developing its membership and keeping its membership informed—did not constitute direct supervisory responsibility over either the formulation, negotiation or performance of the operative agreement between the C and the City/SSA . Thus, the Board concludes that, except with respect to the specific redevelopment agreements and projects discussed below, the Ordinance's permanent post-employment prohibition does not limit your ability to assist or represent the C in performing its agreement with the City/SSA .

The Board's review of your work on five redevelopment projects in the O area, however, does indicate that you exercised contract management authority with respect to the agreements involved in them. Therefore, although you do not anticipate that you would be asked to render such assistance, the Ordinance's permanent prohibition applies to you as described below. Specifically, the facts presented show that:

(1) your work in negotiating the financial package whereby in 199 the City entered into the tripartite agreement with **CV** and [landlord] was sufficient to warrant the conclusion that you were personally involved in the formulation of, and thus exercised contract management authority over, that agreement. Thus, you are permanently prohibited from assisting or representing CV, landlord, the C or any other person with respect to any issues that may arise from that agreement;

(2) your work with respect to drafting and reviewing responses to the RFP by which the City conveyed **DF2** to TCA, and your presentation of the proposal to the CDC, warrant the conclusion that you exercised contract management authority over the redevelopment agreement between the City and TCA. Thus, you are permanently prohibited from assisting or representing the C, any of its members, TCA or any other person with respect to issues that may arise from that agreement or project;

(3) your work in preparing the RFQ, Memorandum of Intent, term sheet and pro forma for the **DF1** project, reviewing the proposed merchandising plan, serving on the committee that reviewed the RFQ responses and selected the KDA team to be the developer, and your involvement in meetings with the CTA, other senior D personnel and KDA representatives regarding the development, are, together, sufficient for the Board to conclude that you exercised contract management authority with respect to the ultimate project and redevelopment agreement. Cf. Case No. 01037.A. (City employee exercised contract management authority over City development agreement by serving on the committee that selected the developer and chairing the committee that approved tax credits and loans for the development, even though no actual agreement had been entered when he left City service). Thus, you are permanently prohibited from assisting or representing the C, any of its members, committees, KDA or any other person with respect to issues that may arise from this development, including those pertaining to any Letters of Support from the C or its committees, or to the identity of the retailers and other businesses that go into the development; and

(4) your work on the mixed-use development to be constructed at **DF3**, including your review of RFP responses and participation in negotiations with JK that resulted in the term sheet, warrant the conclusion that you exercised contract management authority over the redevelopment agreement between the City and JK. Thus, you are, likewise, permanently prohibited from assisting or representing the C, any of its members, JK or any other person with respect to issues that may arise from that agreement. The prohibitions in each of these projects include any formal or informal communications with D or other City personnel with respect to financial, planning or City service-related issues during the course of these projects, or from rendering, to any of the developers, retailers or other businesses involved, advice or other assistance pertaining to those other projects.

The Board cautions you that this opinion has not addressed specific projects other than those identified and discussed in the opinion's body. While you anticipate that you would not be asked to

assist C or any other person (including its members) with respect to City redevelopment agreements relating either to those or other ongoing D projects in the area, the Board advises you to contact this office for specific guidance if you are asked to render such assistance, as you may well be subject to the permanent prohibition with respect to issues arising from the agreements operative within those projects.

**II. Confidential Information.** Section 2-156-070, "Use or Disclosure of Confidential Information," prohibits you, as a former City employee, from using or revealing confidential information acquired through your City employment. Confidential information, for purposes of this section, means information that may not be obtained under the Illinois Freedom of Information Act, as amended.

**DETERMINATIONS:** Based on the Board's analysis of the facts presented under the City's Governmental Ethics Ordinance, the Board determines that, for one year after you left City service (i.e. until February 20, 200 ), you are prohibited from assisting or representing any person, including the C or its members or committees, with respect to: 1) any ongoing or proposed real estate development or redevelopment projects in the O Area (this prohibition is permanent as to the four specific projects listed on pp. 13-14 of this opinion, and includes specifically the activities listed on p. 12 of this opinion); and 2) economic development, marketing, and retail and corporate recruitment in the area served by the C—if and to the extent this assistance or representation entails interacting with personnel, services or programs from the D or any other City agency (this prohibition includes specifically the activities listed on p. 12-13 of this opinion). The Board also determines that the Ordinance's post-employment provisions do not prohibit you from assisting or representing the C in performing the functions listed on p. 11 of this opinion, pursuant to the C's contract with the City/SSA. Our determinations do not necessarily dispose of all the issues relevant to your situation, but are based solely on the application of the Governmental Ethics Ordinance to the facts stated in this opinion. If those facts are incomplete or incorrect, please notify us immediately, as any change may alter our opinion. Other laws or rules may also apply to your situation. We note that any City department may adopt restrictions that are more stringent than those imposed by the Ordinance.

**RELIANCE:** This opinion may be relied upon by: 1) any person involved in the specific transaction or activity with respect to which this opinion is rendered; and 2) any person involved in any specific transaction or activity that is indistinguishable in all its material aspects from the transaction or activity with respect to which this opinion is rendered.

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Darryl L. DePriest  
Chair