

**BEFORE THE CITY OF CHICAGO
BOARD OF ETHICS**

In the Matter of:)	
)	
Alderman Proco Joe Moreno,)	Case No. 12031.OLIG
)	[2012OLIG0009]
)	
Respondent)	

SETTLEMENT AGREEMENT ⁵⁰

This Settlement Agreement ("Agreement") dated ~~April~~^{MAY} 27, 2015 is made and entered into between the City of Chicago Board of Ethics ("Board") and Alderman Proco Joe Moreno ("Respondent") pursuant to §2-156-385(4) of the City of Chicago Governmental Ethics Ordinance ("Ordinance").

The parties agree to the following terms to resolve the matter in the caption. On March 18, 2015 the Board determined that the evidence adduced and presented in this matter warrants the decision that there is probable cause to conclude that the Respondent violated the Ordinance.

Recitation of Relevant Facts

1. At all times relevant to this matter, Respondent was the 1st Ward Alderman in the City of Chicago.
2. In or about September 2010, the Respondent met with a representative of a recycling company ("Company") that places garbage and recycling kiosks on the public way, those kiosks bearing paid, commercial advertising.
3. In the summer of 2011, the Company requested assistance from the Respondent in securing the proper permits in order to place its kiosks in the 1st Ward.
4. In the fall of 2011, the Company placed a number of the kiosks on public sidewalks in the 1st Ward.
5. Respondent was supportive of this activity by the Company because he believed that the City would and should promptly grant permits for this use of the public way as the kiosks were cost free to the City, and, he believed, would generate revenue for the City, and were popular with the residents of the 1st Ward.

6. On February 27, 2012, the Respondent wrote a letter to the Commissioner of the City's Department of Transportation, stating: "I approved the [Company's] program in July 2011 and their approved bins were placed in Wicker Park on September 15, 2011."

7. On or about June 27, 2013, the Board received from the Office of the Legislative Inspector General ("OLIG"), a Confidential Closing Report ("Report") of the OLIG's investigation into this matter and its recommended findings.

8. The OLIG Report recommended that the Board find probable cause that Respondent had violated the following provisions of the Municipal Code of the City of Chicago ("MCC"): 10-8-270, 10-8-320, 2-156-020, 2-156-040 [this section was renumbered to §2-156-142 and revised effective November 1, 2012], 2-156-060, and 2-156-160 [this section was revised effective November 1, 2012].

Statement of Relevant Law (all citations are to the Municipal Code of the City of Chicago ("MCC") as in effect during the time period in which the activities listed in paragraphs 1-6 above occurred)

9. "2-25-060 Powers and Duties.

Permits to use public ways and grounds. The commissioner shall receive and submit to the department of transportation for review all applications for permits to use the public way or public grounds or any space above or beneath any public way or public grounds." Department of Business Affairs and Consumer Protection."

10. "10-8-27 Distribution of commercial advertising matter.

a. It shall be unlawful for any person to distribute or to cause others to distribute, as defined in Section 10-8-325, commercial advertising matter of any kind on any public way or other public place of the City in any manner other than from hand to hand."

11. "10-8-320 Posting bills.

b. No person shall distribute or cause others to distribute, as defined in Section 10-8-325, commercial advertising material by means of posting, sticking, stamping, tacking, painting or otherwise fixing any sign, notice, placard, bill, card, poster, advertisement or other device calculated to attract the attention of the public, to or upon any sidewalk, crosswalk, curb or curbstone, flagstone or any other portion or part of any public way, lamppost, electric light, traffic light, telegraph, telephone or trolley line pole, hydrant, shade tree or tree-

box, or upon the piers, columns, trusses, girders, railings, gates or parts of any public bridge or viaduct, or upon any pole box or fixture of the police and fire communications system, except such as may be required by the laws of the state and the ordinances of the City, or on any bus shelter, except that the City may allow the posting of decorative banners in accordance with Section 10-8-340 below.”

12. “2-156-020 Fiduciary Duty

Officials and employees shall at all times in the performance of their public duties owe a fiduciary duty to the City.”

13. “2-156-040 Offering, Receiving and Soliciting Gifts or Favors.

- c. No person shall give to any official or employee, or to the spouse, domestic partner, minor child of any of them, or any immediate family member residing in the same residence with the official or employee, and none of them shall solicit or accept, any anonymous gift.
- d. No person shall give or offer to give to any official, employee or City contractor, or to the spouse, domestic partner, minor child of any of them, or any immediate family member residing in the same residence with the official or employee, and none of them shall accept, anything of value, including, but not limited to, a gift, favor or promise of future employment, based upon any mutual understanding, either explicit or implicit, that the votes, official actions, decisions or judgments of any official, employee or City contractor, concerning the business of the City would be influenced thereby. It shall be presumed that a nonmonetary gift having a value of less than \$50.00 does not involve such an understanding.
- e. No person who has an economic interest in a specific City business, service or regulatory transaction, and no lobbyist, shall give, directly or indirectly, to any City official or employee whose decision or action may affect such transaction, or to the spouse, domestic partner, or minor child of such official or employee, or any immediate family member residing within the same residence with the official or employee, and none of them shall accept, any gift of (i) cash or its equivalent regardless of value, or (ii) an item or service other than a gift with a value of less than \$50.00, as long as the items or services from any one source do not exceed a cumulative value of \$100.00 during any calendar year. Nothing herein shall be construed to prohibit such person from accepting gifts from relatives or from one’s own domestic partner.

- f. Except as prohibited in subsections (a) and (b), nothing in this Section 2-156-040 shall prohibit any person from giving or receiving: (i) an award publicly presented in recognition of public service; (ii) commercially reasonable loans made in the ordinary course of the lender's business; (iii) political contributions, provided they are reported to the extent required by law; (iv) reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with public events, appearances or ceremonies related to official City business, if furnished by the sponsor of such public events.
- g. Any gift given in violation of the provisions of this section shall be turned over to the Comptroller, who shall add the gift to the inventory of City property.
- h. Nothing in this Section 2-156-040 shall prohibit any official or employee, or his spouse, domestic partner, minor child or any immediate family member residing in the same residence with the official or employee, from accepting a gift on the City's behalf; provided, however, the person accepting the gift shall promptly report receipt of the gift to the Board of Ethics and to the Comptroller, who shall add it to the inventory of City property.
- i. Any official or employee who receives any gift or money for participating in the course of his public employment in speaking engagements, lectures, debates or organized discussion forums shall report it to the Board of Ethics within five business days."

14. "2-156-060 City-Owned Property.

No official or employee shall engage in or permit the unauthorized use of City-owned property."

15. "2-156-160 Content of Statements.

- j. Statements of financial interests shall contain the following information:

(7) Any improper gift that the reporting individual received and disposed of in accordance with Section 2-156-144 because such gift was given in violation of the this chapter;

(8) The name of any person from whom the reporting individual received during the preceding calendar year one or more gifts having an aggregate value in excess of \$250.00, but not including gifts from relatives or domestic partners.”

Conclusions and Determinations of the Board of Ethics

16. At its September 2013 regularly scheduled meeting, the Board found that there was probable cause to conclude that the Respondent had violated the MCC based upon the Confidential Closing Report from the Office of Legislative Inspector General submitted to the Board August 2013 pursuant to §§2-156-385(1)-(3) of the Ordinance.

17. At its March 18, 2015 regularly scheduled meeting, the Board determined, after its meeting with the Respondent pursuant to §2-156-385(3) of the Ordinance, that the evidence adduced and presented in this matter warrants the decision that there is probable cause to conclude that the Respondent violated MCC §2-156-060 by exceeding his authority by knowingly allowing the Company to place kiosks on the City's public way in his ward without having first secured proper permits. The Board did not find probable cause with regard to the other MCC provisions cited in the OLIG Report.

Terms of the Settlement Agreement

18. The introduction, fact recitation, statement of law and Board conclusions and determinations above are incorporated into and made part of this Agreement.

19. At all times, the Respondent has cooperated with the Board of Ethics on the matter in the caption.

20. Respondent maintains that he has acted at all times pertinent to this matter in a manner which he believed in good faith was in compliance with the MCC and in furtherance of the interests of the residents of the 1st Ward, and the Board has not made a final determination otherwise.

21. Pursuant to §2-156-385(4) of the Ordinance, the Board has the authority “[a]fter reviewing all the documents and evidence submitted by the parties, including oral and written responses, the board may: (i) seek to settle the matter by fine...”

22. At its March 18, 2015 regularly scheduled meeting, and pursuant to §2-156-465(b)(7) of the Ordinance, the Board determined that it would be appropriate for it to seek to settle the matter by a fine assessed against the Respondent.

23. The parties agree to enter into this Agreement to resolve all factual and legal issues raised in this matter and to reach a final disposition without the necessity of an evidentiary hearing pursuant to §2-156-392 of the Ordinance to determine Respondent's liability.

24. As to this matter, the Respondent understands and voluntarily waives on his own behalf and that of his successors and assigns any and all: (i) procedural rights under the City's Municipal Code, including a merits hearing pursuant to §2-156-392 of the Ordinance or to subpoena witnesses to testify, confront and cross-examine all witnesses and have the matter heard pursuant to §2-156-392 of the Ordinance; and (ii) rights to commence any judicial or administrative proceeding or appeal before any court of competent jurisdiction, administrative tribunal, political subdivision or office of the State of Illinois or the United States.

25. The Respondent acknowledges that this Agreement is not binding on any other law enforcement or governmental agency outside that of the City of Chicago and does not preclude the Board from assisting such other law enforcement or government agency on this matter.

26. Once executed by Respondent, the Board staff shall submit this Agreement to the Board at its next regularly scheduled meeting, the Board must determine by a majority vote that it approves the Agreement and execute and date the Agreement before the Agreement becomes effective. Full execution shall not be considered a "final determination" or "final decision" pursuant to §§2-156-392 or 2-156-396 of the Ordinance.

27. The parties agree that this Agreement shall become null and void in the event that the Board refuses to approve it. The Respondent further agrees that no member of the Board or its staff shall be disqualified from participating in any proceedings pursuant to §2-156-392 of the Ordinance. The Respondent acknowledges that if the Agreement is not approved or executed by the Board that the Board may seek to fine the Respondent pursuant to §2-156-392 of the Ordinance, which is a hearing on the merits.

28. Within two weeks of the Board's delivery of a fully executed copy of this Agreement to the Respondent or his representative, Respondent shall pay a fine in the amount of TWO THOUSAND AND 00/100 DOLLARS (\$2,000.00) by personal check, payable to the City of Chicago and delivered to the offices of the Board.

29. Respondent releases and holds harmless the Board and its staff from any potential claims, liabilities, and causes of action arising from the Board's enforcement and settlement of the violation described in the Agreement and to contest the lawfulness, authority, jurisdiction, or power of the Board in imposing the sanction which is embodied in this Agreement, and right to make any legal or

equitable claim or to initiate legal proceedings of any kind against the Board, or any members or employees thereof relating to or arising out of this Agreement or the matters recited herein.

30. In consideration of Respondent's complete and timely performance of his obligations pursuant to this Agreement, the Board waives any further penalties or fines against Respondent for the violation described in this Agreement.

31. If the Board is forced to seek judicial enforcement of this Agreement, and prevails, the Respondent shall be liable for attorneys' and costs reasonably expended in enforcing compliance with the Agreement. Fess for time spent by Board or other City attorneys shall be calculated based upon standard and customary billing rates in Chicago for attorneys with similar experience.

32. Respondent acknowledges that, pursuant to §2-156-385(4), this Agreement shall be made public.

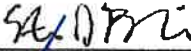
33. Respondent acknowledges and understands that, at its March 18, 2015 regularly scheduled meeting, the Board determined, after its meeting with the Respondent pursuant to §2-156-385(3) of the Ordinance, that probable cause still existed to conclude that the Respondent violated §2-156-060 in that he exceeded his authority in allowing the Company to place kiosks on the City's public way in his ward without proper permits, and he now understands the meaning of the aforesaid section of the Ordinance that an official shall not "engage in or permit the unauthorized use of City-owned property" to encompass his conduct at issue in this matter.

34. The Agreement contains the entire agreement between the Board and the Respondent and it may not be modified unless the modified Agreement is re-executed and re-dated by both parties.


35. Respondent confirms that he has entered into this Agreement freely, knowingly and intentionally, without coercion or duress and after having had the opportunity to be represented by an attorney of his choice, accepting all the terms and conditions contained herein without reliance on any other promises or offers previously made or tendered by any past or present representative of the Board and fully understanding all the terms of this Agreement. The terms of this Agreement are contractual and not mere recitals. If any of the provisions of this Agreement shall be found invalid or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. If the Board rejects this Agreement, nothing in it shall be considered an admission by either party and, except for paragraph 9 hereof, nothing in this Agreement shall become effective.

Dated as first written above and executed below.

City of Chicago Board of Ethics




Steven I. Berlin, Executive Director




Stephen W. Beard, Chair

Respondent



Honorable Proco Joe Moreno

Approved as to form and content



Matthew J. Piers, Esq.
Attorney for Respondent