**CONFIDENTIAL**

[date]

The Honorable

Alderman 51st Ward

City Hall

121 N. LaSalle St.,

Chicago, IL 60602

 **Re: Case No. 151688.Q / Secondary Employment**

Dear Alderman :

You are the Alderman for the 51st Ward. You first met with Board staff on [date] to ask whether and how the City’s Governmental Ethics Ordinance (the “Ordinance”) will affect your plans to have a secondary position as a salaried employee of or consultant to the [U organization [“U”]] .[[1]](#footnote-1) You told us that you intended to work as a consultant for [U] and serve and as its operations manager, when it partners with the [T organization] and that this work would likely begin sometime in [year]. At that time, because many variables related to the project remained uncertain, we agreed that we would communicate further once more information regarding the project was available. Accordingly, Staff has followed up with you through emails and most recently, an in-person meeting at City Hall on [date] to add to our understanding of the facts. We now have a thorough understanding of the necessary relevant facts on which to base this opinion, including the fact that your proposed secondary employment or consultancy will now begin in [year].

As we have concluded in this opinion, and as we explain, the Ordinance does not prohibit you from having this secondary position. However, if you decide to accept it, you will be subject to many restrictions: because you anticipate receiving compensation from [U] , you would be effectively prohibited from representing [U] in any formal or informal transaction involving the City, as well as from participating in any discussions or votes before the City Council or any of its committees that would involve [U] . This means that, should [U] or the [T] require action from you, in your capacity as the 51st Ward Alderman, you would be required to step aside from making such recommendations, and have another alderman step in your place. And, for one full year before you are paid by [U] , you will be prohibited personally from providing aldermanic services to [U] , or from directing other City officials and employees, such as your aldermanic staff, to do so. In other words, any services that [U] would need from the City would need to be provided without your involvement.

Thus, we caution you that, while you are not prohibited by the Ordinance from engaging in this outside, secondary employment, it might pose a hardship for the [U] organization itself, and therefore we advise that, prior to beginning this secondary employment, you discuss with [U’s] management the restrictions to which you will be subject. As with other City employees and officials we have advised in past cases involving their potential employment or board service with firms or organizations that are located in their ward or with whom they interact regularly, you and [U] may conclude that you could do more for [U] purely in your aldermanic role, as opposed to being a paid employee of or consultant to the organization.

**Facts**.

[U] is a delegate agency[[2]](#footnote-2) of the City at this time, but will cease being one when the [T facility] opens in [date] . The [T facility] is now under development, with an anticipated opening of [date]. [U] and the [T facility] are both located in [your] Ward. [U] currently leases and manages a facility , at [address] , from [anther government agency] . [U] also leases and manages [other property], located at [address] , from [another government agency] . The [T facility] , located at [address] in Chicago, is one part of a mixed-use development called [TT] that is being developed by [I] .[[3]](#footnote-3) You anticipate that its construction will be completed in September 2017. Upon completion, the [T] will be used primarily as a facility to provide opportunities for neighborhood [people]. In the evenings, the facility will host . [I] will own the facility and will be [U’s] “landlord” when the [T] opens.[[4]](#footnote-4) [U] will also manage and operate [T] . It is anticipated that once [T] opens, there will be a usage agreement with the [another government agency] and/or [another government agency] and that either or both of these agencies will have an onsite presence.

You explained that, in your work as alderman of the 51st Ward, you have had no involvement with [I]. You also said that construction of the facility by [I] is currently being funded with state monies, as well as Community Development Block Grants (CDBGs)[[5]](#footnote-5) which are offered through the City’s Department of Children & Family Services, with federal tax credits, and likely with private funding, as well. You told us that the [business] , the foundation and [a non-profit] currently have pending fundraising proposals. As Alderman, you are actively involved in private fundraising for the construction and eventual operation of the [T] . Once it is open, [T] will rely primarily on partnerships with and grants from private entities, such as the [business] and [another non-profit] [[6]](#footnote-6), for its operating costs.

Initial development of the [T] required two (2) zoning reclassifications that came before City Council for a vote on [date] . [I], the site’s developer, was the applicant for the zoning reclassifications. You told us that, as the alderman, you made recommendations, and voted in favor of, the reclassifications before the full Council. The motion to reclassify the zoning passed by unanimous vote.

**Legal Analysis**.

As an initial matter, please note that our Board has long recognized that nothing in the Ethics Ordinance prohibits City elected officials, including aldermen, from engaging in outside or secondary employment, although clear restrictions apply. *See* Case Nos. 12049.Q; 97034.Q; 99038.Q.

Under the Ordinance, the restrictions placed upon you are:

**1. Representation of Other Persons.**

Under §2-156-090(a), as an elected City official, you are prohibited from “representing” or deriving or receiving any income or compensation from the “representation” of any other 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.) 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 the interests of that party, such as attending or speaking at face-to-face meetings, making phone calls, or signing documents submitted to a City department. See Case Nos. 90035.A and 97061.A.

The wording of this provision is such that it does *not* prohibit you from representing or appearing on behalf of your constituents before a City agency in the course of your duties as an alderman, though it does prohibit you from receiving any compensation or anything of value for such representation. However, because you anticipate having secondary employment with and/or receiving compensation from [U] , we advise you (as we have advised other aldermen in past cases) that any “representation” that you would undertake on [U’s] behalf—or, for that matter, [I’s] behalf—before any City agency, department, official, or employee, in any City matters (even those matters pending in your own Ward office), such as interceding on its behalf in a matter involving, say the City’s Departments of Transportation, or Planning & Development, or Administrative Hearings, would be perceived not as your actions in your official capacity, but in your capacity as an employee or agent of [U] . Thus, as we have advised City employees and aldermen in past cases, we advise you to refrain from engaging in any such representation. See Case Nos. 07018.Q; 06037.Q; 93014.Q.

Second, under §2-156-090(b), as an elected City official, you are prohibited from deriving any income or compensation from the representation of any person, such as [U] , in any judicial or quasi-judicial proceeding in which the City is a party and [U’s] interests are adverse to the City’s. We do not foresee that this prohibition would pose any challenges for you.

**2. Fiduciary Duty.**

Under §2-156-020, you owe a fiduciary duty to the City. As our Board and Illinois courts have recognized, this obligates you to discharge your public duties as an alderman at all times in the City’s best interests, free from and uninfluenced by the duties you owe others (such as [U] here). 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.2d 649 (7th Cir. 1998). Your fiduciary duty requires that you to use your City position as alderman responsibly and in the best interests of the public, and exercise your professional judgments and City responsibilities free from conflicting duties to outside entities. It also requires that, should an issue arise in which the City’s interests are adverse to or conflict with [U’s] , you must resolve that conflict in the City’s best interests, not [U’s] , or recuse yourself from involvement in such a decision.

**3. City–owned Property.**

Section 2-156-060 of Ordinance prohibits City officials and employees from using or permitting the use of City-owned or City-leased property for anything other than its authorized purposes. “City-owned property” includes, among other things, City-issued computers, telephones, smart phones, vehicles, offices, letterhead—and your City title itself, the City seal, your Committee letterhead, and your City business cards. Your City title and the City seal carry with them the weight or “imprimatur” of City government. They must be used carefully, to avoid misleading people into believing you are acting in your official capacity in a personal matter or in connection with your outside employment. Accordingly, while the Board does not have the authority to authorize (or “dis”-authorize) any particular use of City-owned property, we advise that you not use your aldermanic title, the City seal, or any City letterhead when doing any kind of work or fundraising for [U] .

**4. Fundraising.**

You indicated that you are currently engaged in, and will in the future engage in, fundraising activities on behalf of [U] . The relevant provision of the Ordinance that pertains to this activity is §2-156-142(h), which provides, in relevant part:

 … no city official or employee shall solicit any gift on behalf of a third party, if: (i) that official or employee knows that the prospective donor is seeking administrative or legislative action from the City, and (ii) the official or employee is in a position to directly affect the outcome of that action.

In other words, this subsection prohibits you, as an alderman, from soliciting on [U’s] behalf any potential donor who is “seeking administrative or legislative action from the City”[[7]](#footnote-7) if you could have a direct effect on that City action. Thus, we advise you to ensure that any person, individual, business entity, or other organization that you are considering soliciting to make a contribution to [U] matters then pending before your aldermanic office, or the City Council, or, for example, [any City Council committee on which you serve.]

**5. Money for Advice.**

This provision, §2-156-142(f), prohibits you from accepting anything of value, such as compensation, gifts, promises, campaign contributions, etc. from anyone other than the City (such as [U] ), for giving advice or assistance on matters concerning City business, if the matters are in any way related to your aldermanic responsibilities, or could come before City Council. The prohibition includes receiving compensation or anything else of value for giving even "behind the scenes" advice. As the Board determined 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 [or regulatory assistance, etc., we add here]. 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.” Case No. 88022.A.

What this prohibition means in your case is that, because you envision being a paid [U] employee or consultant, you cannot advise [U] on any matters involving the City, even behind the scenes, and that, should such issues come up, you cannot “represent” [U] , as discussed above in any communications with other City officials or employees, nor could you give advice to your [U] co-workers or to [U’s] management on matters involving the City, if there is a reasonable possibility that the matter would come before the City Council. Others in the [U] organization can and would have to handle such matters without your assistance. Should a matter come up that would otherwise require your approval or recommendation as the alderman of the ward in which [U] is located, you would need to ensure that another City Council member handles it and that you do not participate in or try to influence the matter in any way.

**6. Conflicts of Interest; Improper Influence.**

Two sections of the Ethics Ordinance require that you recuse yourself from certain matters pending before the City. Sections 2-156-030(a) and (b), “Improper influence,” and 2-156-080(a) and (b)(1) & (2), “Conflicts of interest, appearance of impropriety,” both provide, in relevant part, that you cannot make, participate in making or in any way attempt to use your City position to influence any City governmental decision or action involving a person (here, [U] ) from whom or which you have derived any income or compensation during the preceding twelve months, *or from whom or which you reasonably expect to derive any income or compensation in the following twelve months*. Pursuant to these sections, we advise you that you would be required to disclose to the Board of Ethics, in writing, within 96 hours (4 days) of discovering them, any matters before the City Council or any of its committees that directly involve [U] , and then recuse yourself from any discussions or votes on such matters. This will include any votes during [year] on [U’s] CDBG grant, that may be part of the City’s [year] budget package. We advise you that you will be required to take a “Rule 14” on that matter, and not attempt to influence the Council’s vote on that matter in any City Council Committee meetings or before the full Council when the budget comes up for votes.

Further, because you have a reasonable expectation of receiving compensation from [U] in the next 12 months, then, pursuant to §2-156-030(b), which is similar to the other restrictions, you would not be allowed to become involved in, or direct other City employees or officials, such as committee staff or [your] Ward staff, to become involved in, any City matters involving [U] , including matters pending before the City Council or any other City department, such as the Mayor’s Office, or the Departments of Buildings or Transportation. We note, however, that this prohibition does not extend to matters pending before “sister agencies” of the City, such as the Chicago Public Schools or the Chicago Park District.

**7. Confidential Information.**

In addition, §2-156-070, “Use or Disclosure of Confidential Information,” prohibits you from using or revealing, other than in the performance of your City duties, confidential or non-public information you have acquired through your City service as an alderman. “Confidential information” here means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended. Further, and similar to restrictions discussed above under “fiduciary duty,” §2-156-060, “City-Owned Property,” prohibits you from using any City property or resources—including your City business cards or City title--in your non-City position or for any private benefit, such as [U’s] .

**8. Statements of Financial Interests – “FIS.”**

As an elected official, you are required to file annual FIS forms pursuant to §2-156-150(a) of the Ethics Ordinance. You will be required to disclose your outside compensated relationship with [U] on these forms, beginning in the year after you begin compensated work for the organization.

**Reliance.**

 Our conclusions and advice are based solely on the application of the Governmental Ethics Ordinance to the facts summarized in this letter. Other laws or rules, including federal laws or regulations, or the State of Illinois’s Public Officer Prohibited Activities Act (50 ILCS 105/0.01 et seq.), may apply to this situation, and we advise you to consult with competent counsel as to their applicability. If these facts are incorrect or incomplete – or if they change in the future – please notify our office immediately, as any change may alter our conclusions or advice. Please note, as well, that this opinion may be relied upon by any person involved in the specific transaction or activity with respect to which this opinion is rendered.

Our office appreciates the opportunity to advise you, and your conscientiousness in seeking our advice. If you have further questions about this or any other matter, please contact us.

Sincerely,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Lisa Eilers, Deputy Director

Approved:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Steven I. Berlin, Executive Director

1. You currently volunteer in the programs at [U] as well as with [U’s service] Program. [↑](#footnote-ref-1)
2. The City receives a Community Development Block Grant (CDBG) from the United States Department of Housing and Urban Development (HUD) to serve the needs of low- and moderate-income people, families, and communities. CDBG is the largest annual federal grant to the City that addresses human service needs. OBM administers CDBG grant funds while departments manage the contracts executed between the City and not-for-profit "delegate agencies" throughout Chicago. The delegate agencies serve needs ranging from public health, housing and homelessness, to workforce training, seniors, the disabled and more. By partnering with delegate agencies, the City can provide effective services and support community based programs and solutions. [↑](#footnote-ref-2)
3. [I] is a neighborhood-based community organization. [I’s] initial focus is on the communities that were served by the including neighborhoods such as neighborhoods such as that have [certain] populations . [↑](#footnote-ref-3)
4. You said that, as currently envisioned, [I] will turn over its ownership in the property to [another government entity after [number] years .

 [↑](#footnote-ref-4)
5. [U] is currently receiving approximately $[amount] per year through CDBG grants administered through the City. You told us that each time [U] has sought a CDBG grant for more than the past ten (10) years, you have made recommendations regarding, and voted for, the grant. [U] will have CDGB funding through [date] . You told us that there will be one (1) more vote on CDGB funding and we advised you that you must recuse yourself from voting on that line item when it is before the City Council for a vote. [↑](#footnote-ref-5)
6. [deleted] [↑](#footnote-ref-6)
7. “Administrative action” and “legislative action” are defined in §2-156-010 of the Ordinance:

§**2-156-010 Definitions**

(a)“Administrative action” means any decision on, or any proposal, consideration, enactment or making of any rule, regulation, or any other official nonministerial action or non-action by any executive department, or by any official or employee of an executive department, or any manner which is within the official jurisdiction of the executive branch.

(o)“Legislative action” means the introduction, sponsorship, consideration, debate, amendment, passage, defeat, approval, veto or other official action on any ordinance, resolution, motion, order, appointment, application or other matter pending or proposed in the city council or any committee or subcommittee thereof. [↑](#footnote-ref-7)