**CONFIDENTIAL**

May 4, 2015

[Ms. PC]

121 N. LaSalle St.

Chicago, IL 60602

**Re: Case No. 15027.Q; Prohibited Conduct**

Dear PC,

On Friday, May 1, you asked me about any restrictions imposed by the City’s Governmental Ethics Ordinance and other rules or policies on [MR] , who is being considered for the position of of the City’s Department of [X] . At your direction, [MR] and I emailed each other yesterday and spoke this morning. Based on the facts presented, it is my opinion that there is nothing in the Ordinance that would prohibit [MR]from accepting this position, though [MR]will be required to recuse herself from various potential transactions involving [X] and delegate any responsibility with respect to those transactions to another department employee and will have various disclosure requirements. These are all set forth below. Moreover, in my reading of the City’s Personnel Rules[[1]](#footnote-1), [MR] would need a waiver from Rule XXIX, Section 2 (b)(ii).

Specifically, I address the following activities and ownership interests that [MR] has presented:

1. [F] Board service. [MR] incorporated an LLC, , which has a contract with an indefinite term with [F] under which contract [MR] serves on [F’s] Committee. [F] is an investment fund started by [U] , a [foreign] investment bank. It invests in various infrastructure projects, all in [foreign country] , including water supply systems, tolls roads, wind energy, tunnels and bus rapid transit system. It has no proposed investments in . [MR] explained that, as a Board member, [MR] evaluates proposed investments, and raises questions about various technical and financial aspects. [MR’s] service involves between one and three meetings each year, and [F] reimburses travel expenses, and pays a small stipend.

Under the Ordinance, the only restriction to which [MR] will be subject is that, in the unusual and unexpected event that [F] would decide to make an investment in a company that has or is bidding on a contract with [X] [MR] would need to recuse from working on that contract or any project that results. That is because §2-156-111(d) of the Ordinance, the so-called “reverse revolving door” provision, prohibits any incoming City employee from participating in a decision-making capacity in a matter that benefits a immediate former client on whose behalf [the employee] acted as a consultant (or [MR’s] immediate former “employer”). As [MR] explained, the possibility of this occurring is remote, but, since she [MR] has and expects to continue to derive compensation from [F] , recusal would be necessary. In addition, [MR] would need to disclose on the annual Statement of Financial Interests both her board service for, and, if it amounts to more than $1,000 per year, compensation from, [F] .

Under the City’s Personnel Rule XXIX, Section 2, (b) (ii), however, department heads are prohibited from having “any employment relationship with any entity other than the City.” My office does have the authority to interpret, administer or enforce the City’s Personnel Rules, but I would advise considering and granting [MR] a waiver from this Rule, should one be necessary, for [MR’s] board service with [F] assuming that [MR’s] board service (via [the] LLC) is even considered an “outside employment relationship” with it in the first place. I believe that has the authority to grant such a waiver, if one is required, but I advise you to discuss the issue of a waiver with the [heads of departments B and Z]. .

2. [S] Stock. [MR] explained that [MR]recently learned that [MR] recently became the owner of [less than $10,000] in stock of [S] , through a retirement plan. [S] is organized as an S Corporation; it is privately owned. [MR] was employed with [S] until February 2014, and advised me that, other than this stock, [MR]and [S] have no other monetary or economic relationship ([MR] had originally owned a much larger amount of [S] stock, but, when [MR] began employment as a [position with the previous employer] , [S] purchased back the entire allotment of stock. [MR] has informed me that, if necessary, [MR] will request that [S] do the same for the current stock ownership. As explained here, in my reading of the Ordinance and the City’s Personnel Rules, that is necessary. You informed me that it is expected that, [X] will be announcing a contract with a joint venture between [S] and [J] , for the [C system] . The question I address is whether [MR] would be restricted in any way restricted from participating in the management of that contract.

Under the Ordinance, [MR] would be, for as long as she owns more than $1,000 of [S] stock.

There are three potentially applicable Ordinance provisions.

First, [S] is not [MR’s] “immediate former employer”—[A] is.[[2]](#footnote-2) Thus, §2-156-111(d) does not apply here.

Second, there are potential restrictions contained in §§2-156-030(a) and -080(a), entitled, respectively, “Improper Influence” and “Conflicts of interests; appearance of impropriety.” These provisions would prohibit [MR] from participating in any City decision transaction or project in which [MR] would have a financial interest, or from which [MR] has or would expect to earn income or compensation worth more than $1,000 in the previous or following twelve months. [MR’s]stock in [S], which is part of [MR’S] retirement package, does not qualify as an interest in or income or compensation from the [C system] project. Hence, the Ordinance itself would not prohibit [MR] from becoming involved in this project from day one of [MR’s] City position .

However, third, §2-156-110, entitled “Interest in City Business,” would apply, and would prohibit [MR] from exercising contract management over this contract for as long as [MR]owns this stock. This is because [MR’s]stock is worth more than $1,000, and this stock is not registered on a securities exchange pursuant to the Securities Exchange Act of 1934, and thus [MR]has a “financial interest” in that stock. The operative provision of the Ordinance is §2-156-110(b), which provides: “notwithstanding anything to the contrary in this section, no city official or employee who has contract management authority over any contract, work or business of the city shall have a financial interest in any entity which is a contractor, subcontractor, or otherwise a party to that contract, work or business.” While it could be argued that [S] is neither the contractor, subcontractor or otherwise a party to this [C system] project, I would advise erring on the side of caution, and ensure that, before [MR]would make any decisions on this project, [S] buy back the stock. [MR]indicated that [MR]will request that that transaction be closed on an expedited basis.

Moreover, once again, I point out two Personnel Rules that appear to apply, Rule XXIX, Section 2, (b) (i) and (ii). They provide:

Section 2 - Certain Business Relationships Prohibited/Disclosure Requirements

(b)(i) No employee of any other executive department or agency, or entity in which such an employee has a financial interest, shall have any employment or business relationship with any person who is doing business with the City if the employee exercises contract management authority with respect to that person’s business with the City. No spouse or domestic partner of such employee shall have a financial interest in any contract when the employee exercises contract management authority with respect to that contractor’s City business. The ownership interest of the spouse or domestic partner of any employee in any entity that has a contract with a person doing other City business shall be disclosed to the Board of Ethics by the employee, on a form to be prescribed by the Board, on or before May 1 of each year.

(ii) No department or agency head shall have any employment relationship with any entity other than the City; nor shall such persons have any business relationship with any person doing business with the City.

The term “business relationship” is defined in Rule XXIX Section 1, (h), as: “any contractual or other private business dealing of an employee with a person or entity which entitles the employee to compensation or payment in the amount of $2,500.00 or more in a calendar year; provided, however, that the exclusions applicable to a “financial interest” shall apply with respect to business relationship.

As I read these Rules, [MR] could not own more than $2,500 of [S] stock (through retirement or otherwise) and be either a department head, or exercise contract management authority with respect to [S] . Without analyzing whether the joint venture would be with an entity separate from [S] (in all likelihood, it would—it’s likely that [S] and [J] have formed a new, separate entity that will contract for this project with [X] ), my advice is that [MR’s] stock be purchased back by [S] as soon as possible, so that [MR] cannot be said to have a “business relationship” with either [S] or the joint venture, and can begin exercising contract management authority on this project as soon as possible. However, once again, I advise that you discuss this the [heads of departments B and Z], to ascertain whether [MR] could begin making decisions with respect to this joint venture under this Rule even if [MR] still owns her (relatively small) amount of [S] stock, and is in the process of having the corporation buy it back, and given that [MR] took ownership of it prior to the project being announced, and of course has had nothing to do with the project.

3. [MR] also explained [MR’s spouse’s] potential consultancy opportunities to me. [MR’s spouse] is retired, but may from time to time consult on issues with the [V federal agency] or perhaps other federal agencies. There is nothing in the Ordinance or, in my reading, in the City’s Personnel Rules, that would impact [MR’s] ability to serve by virtue of [these] activities.

4. Last, [MR’s and spouse’s] long-time financial advisor is married to the Administrator of the Federal [agency] . There is nothing in the City’s Governmental Ethics Ordinance that would restrict [MR] in [City] service by virtue of this contractual relationship, though you may wish to seek the advice of the [Federal agency’s] Ethics Officer to ensure that there would no restrictions and nothing that would require [MR] to terminate the contractual relationship with the investment adviser. It is possible that [MR] has already received such advice.

Our conclusions and advice are based solely on the application of the Governmental Ethics Ordinance to the facts summarized in this letter. Other laws, rules or policies, including but not limited to the City’s Personnel Rules (as discussed above) also apply. If these facts are incorrect or incomplete, please notify me immediately, as any change may alter the conclusions and advice. Our office appreciates the opportunity to advise you. If you have further questions about this or any other matter, please contact us.

Yours very truly,

Steven I. Berlin

Executive Director

1. They are printed in their entirety at this web address:

   <http://my.cityofchicago.org/dam/intranet/documents/depts/dhr/POLICIES/2014PERSONNELRULESFINAL_2014_v3.pdf> [↑](#footnote-ref-1)
2. Hence, [MR] would be prohibited from working on any matters that would directly involve [A], but the possibility of this occurring is extremely remote, and is curable by recusal. [↑](#footnote-ref-2)