***Via email*** Case No. 151701.Q/Post-employment

November \_\_\_, 2015

Good morning \_\_\_\_\_,

I am writing in response to your inquiry regarding whether and how the Governmental Ethics Ordinance will restrict your post City employment plans.  When we spoke by telephone on October \_\_\_, you told me that at this time, following your contemplated retirement from City employment at the end of [month] 2016, you are considering joining either a large firm to practice in its Municipal Law group or a considerably smaller firm for which you would do licensing and permit work.

You first joined the City as a \_\_\_\_\_\_\_\_\_\_ with [City department A] in 1993, a position you held for seven (7) years. Thereafter, you worked for what was known as the \_\_\_\_\_\_\_Commission, which later became a part of the City's Department of\_\_\_\_\_\_\_.  While with [City department B], which later became (City department C), you held the working titles of \_\_\_\_\_, \_\_\_\_\_\_, and beginning in March 2010, \_\_\_\_\_\_\_, the position you currently hold.  Your title for City budget purposes is, and has been throughout your City employment (with the exception of your time with [City department A], \_\_\_\_\_\_\_\_, which is a career service title.

**Law and Analysis.**  The primary section of the Ethics Ordinance at issue with respect to your inquiry is §2-156-100, entitled “Post-Employment Restrictions,” specifically subsection (b), which states:

*No former official or employee shall, for a period of one year after termination of the official’s or employee’s term of office or 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.*

Section 2-156-010(g) defines “contract management authority” as follows:

*“Contract management authority” 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.*

By way of plain language explanation, this subsection prohibits you, as a former City employee, from “assisting or representing” any person, such as a law firm you may join or any of its clients, in any business transaction involving the City for one year after the effective termination date of your City service, if you “participated personally and substantially in the subject matter of that transaction” while you were a City employee.  It further provides that, if you “exercised contract management authority” with respect to a City contract during your City service, the prohibition shall be permanent as to that contract. The Board has recognized that assisting and representing a person in a business transaction involving the City includes helping the person to seek, as well as perform, a City contract, and also includes rendering advice, negotiating contracts, or preparing or submitting documents to the City on behalf that person.  *See Case No. 04058.A.*

**One-Year Prohibition.**

We advise you that for purposes of §2-156-100(b) of the Ordinance, the “subject matter” in which you were “personally and substantially involved” is \_\_\_\_\_\_\_ and any other matters that were the responsibility of [City department B] (later City department C)  while you held a position in the department. *See Case No. 04058.A.*  Thus, we conclude that, for one year from the date you leave your City service, you will be prohibited from assisting or representing any person, such as a law firm or its clients, in any business transaction involving [subject matter] and/or another matter falling under the purview of [City department C]. This restriction extends to other matters, such as zoning, if liquor licensing is a factor under consideration. Further, as you worked as a \_\_\_\_\_\_\_\_ with the City, you are also prohibited from representing individuals before [City department A] for a period of one year. This restriction does not, however, prohibit you from joining a law firm nor does it apply to other employees of a law firm — but we further advise you that, for this time period, you should work with whatever law firm you may join to build an effective and impermeable ethical screen to ensure that you have absolutely no involvement (even “behind the scenes”) with any matters, business or projects that it or its clients may seek with respect to these matters during that year.

**Permanent Prohibition**.

With respect to the Ordinance's permanent prohibition, it is applicable to any still pending proceeding or matter that came before you during your time with [City department C]. Thus, we advise you that the Ordinance prohibits you from assisting or representing a law firm you may join, or its clients, with respect to any proceeding or matter on which you had involvement. The Board of Ethics has considered a series of cases interpreting the permanent prohibition, finding that this prohibition broadly applies to all aspects of assistance, including even “behind the scenes” or administrative work.  Accordingly, in accepting a job with a law firm, you are again reminded to ensure that an effective ethical screen is established so that you have no connection with any matter or proceeding on which you had involvement while employed by the City, including, but not limited to: accessing any documents; management; discussions; decision-making; and/or input concerning the matters/proceedings.

**Confidential Information**.  Finally, Ordinance §2-156-070, “Use or Disclosure of Confidential Information,” permanently prohibits you from using or revealing confidential information you acquired through your City employment.  “Confidential information,” for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

**Penalties for Violating the Ordinance’s Post-employment Provisions**.  Staff reminds you that the penalties for being found to have violated the Ordinance’s post-employment provisions are severe: violators shall be subject to a fine of not less than $500.00 and not more than $2000.00 for each offense, pursuant to Ordinance §2-156-465(b)(7). Further, §2-156-510 of the Ordinance provides that any contract negotiated, entered into, or performed in violation of any provisions of the Ordinance can be voided by the City.  Additionally, any permit, license, ruling, determination or other official action of a City agency applied for or sought, obtained or begun in violation of the Ordinance is invalid.  Moreover, you signed an “Ethics Pledge” regarding the two-year lobbying ban, and a violation of that ban subjects you not only to the penalties just noted, but also to a civil action for damages or an injunction, and disgorgement of all monies received in connection with the violation.  *See* §2-156-015(d).

**Reliance.**  Board staff’s conclusions and advice are based solely on the application of the Ethics Ordinance to the facts summarized in this letter.  If these facts are incorrect or incomplete, 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 professionalism in seeking our advice on numerous occasions.  If you have further questions about this, or any other matter, please contact me.

Sincerely,

Lisa Eilers