

BOARD OF ETHICS

Open Session Minutes

SEPTEMBER 13, 2021, 3:00 P.M.

740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
David L. Daskal
Hon. Barbara McDonald

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard J. Superfine, Legal Counsel
Lauren Maniatis, Investigator/Attorney
Edward Primer, Program Director

BOARD MEMBERS ABSENT

Dr. Stephanie Cox-Batson
Dr. Daisy S. Lezama

GUESTS ATTENDING

Alex Nitkin, The Daily Line
Heather Cherone, WTTW

The meeting was convened and conducted through the use of the Zoom remote video and audio meeting platform.

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of August 23, 2021.

II. CHAIR'S REPORT

The Chair again thanked the staff for its continuous diligent work during the course of the pandemic, and asked how the Board could support pay raises for staff. The Executive Director said that, for 2022, the Mayor has granted all employees a cost of living increase, but that, in the next few years, we may request them for the three staff members who do not receive pre-scheduled pay increases (the Executive and Deputy Directors and Staff Attorney/Investigator).

III. MEMBERS' REPORTS

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Potential Amendments to Ordinance

We have on our website a color-coded version of the Ordinance showing all changes made since January 2018. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/Ordinances/GEO-2019-color%20through%20June%202020.pdf>

Staff continues to work on another list of recommended Ordinance amendments, potentially to be presented to the Board with an eye toward forwarding those recommendations to the Mayor and City Council.

B. Board Members

I'm pleased to report that the reappointment of Bill Conlon to continue as Chair and the nomination of Norma Manjarrez were unanimously passed on September 9 by the City Council's Committee on Ethics and Government Oversight on September 9, for approval by the full Council at its September 14 meeting. Norma is a partner at the law firm Ogletree, Deakins. We look forward to welcoming her at our October meeting.

C. 2022 Budget

We submitted our budget appropriation request for 2022 and have been advised preliminarily that our appropriation will increase 5.8%, due to cost of living raises granted to all City employees. Our annual budget hearing before the City Council is scheduled for September 30.

D. Education

On-line Training

For appointed officials

To date, all but 11 appointed officials have completed the annual training for appointed officials. We will not enforce deadlines for this year's training, due to the Covid-19 pandemic. We are grateful for the assistance of the Mayor's Office of Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 30,227 employees and 49 aldermen have completed the program (leaving ~745 employees and one elected official who have not yet completed the training). This puts the City at about 98% compliance City-wide. 19 employees are currently in progress. We again extended the deadline several times, but at this point, due to Covid-19, and the fact that the training must, by design, be completed from a City computer, there are simply too many outstanding non-trained personnel to enforce the fine provisions in the law.

We have completed the next on-line seminar and will post it in January 2022. Despite Covid, we will enforce the law in 2022, as the next program must be completed before January 1, 2023. The vendor we have been using for this and for our on-line lobbyist training programs, Articulate, is closing their business at the end of year. We are working with the Department of Human Resources to migrate our training programs to the City's e-learning management system. This will enable users to take the training from any computer. The current and all previous training programs were deliberately designed to be taken only from City computers for security reasons.

For lobbyists

To date, all lobbyists completed the annual on-line training. We completed the 2021-2022 lobbyist training and hope to have it posted on the new e-learning system in the next few weeks.

Classes and other presentations

We cancelled all in-person classes from March 2020 on. Given the course of the pandemic, we are unable to re-start these classes. We have extended all training deadlines accordingly. All Board classes and educational programs cover sexual harassment.

E. Advisory Opinions

Since the Board's last meeting, we have issued 215 informal advisory opinions. The leading categories for informal opinions were, in descending order: Gifts; Travel; City-owned Property; Campaign Financing; Post-employment; Political Activity; and Statements of Financial Interests.

The leading City departments from which requesters came in this period were, in descending order: Police Department/Civilian Office of Police Accountability (COPA); City Council; Mayor's Office; Law Department; Business Affairs and Consumer Protection; and Department of Public Health.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. (This same practice occurs with our colleagues at the New York City Conflicts of Interest Board, who issue roughly the same number of informal opinions.) They form the basis for much of our annual and periodic educational programs.

In the past five (5) years, the Board has issued 59 formal opinions, including nine (9) this year alone. Formal opinions are made public, in full text, with names and other identifying information redacted out.

F. Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions

The full text of every formal Board opinion issued since 1986 is posted on the Board's website (more than 910), redacted in accordance with the Ordinance's confidentiality provisions, here: https://www.chicago.gov/city/en/depts/ethics/auto_generated/reg_archives.html

Redacted opinions are posted once issued by or reported to the Board. Summaries and keywords for each of these opinions are available on the Board's searchable index of opinions, here: https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/AO_index.docx

Only a handful of other ethics agencies have comparable research tools. We are unaware of jurisdictions that make their *informal* opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or

enforcement. The opinion issued by Board staff that will be discussed in Executive Session will be added to these sites.

G. 2021 Statements of Financial Interests

All 3,603 City employees and officials who, on February 28, were notified of the requirement to file their 2021 Statements have now filed them. As of May 12, we began assessing daily fines of \$250 to all who had not then filed. We collected \$19,050 in late fines. Six (6) who did not pay their late fines are being referred to the Law Department for collection.

H. Lobbyists: Q3 Reports

To date for 2021, there are 865 registered lobbyists – another all-time high. We have collected \$410,275 in lobbying registration fees. Q2 Activity reports were due before July 21. We found three (3) lobbyists in violation of the Ordinance for late filing and assessed one (1) of them an \$11,000 fine, which was settled by the Law Department. Q3 Activity reports will be due before October 21, and all registered lobbyists will be sent email reminders beginning October 1.

I. Personnel Rules Revisions

In conjunction with the Mayor's Office, Departments of Human Resources, Law, Buildings, Business Affairs and Consumer Protection, and others, we worked on updating the City Personnel Rules, which were last revised in 2014. In particular, we are assisting on revisions to Rule XXIX, entitled "Conflict of Interest," with respect to: (i) conforming the Rules to the current version of the Governmental Ethics Ordinance; and (ii) expanding that Rule to prohibit City employees from making certain recommendations as to the hiring of other City employees and to recommending vendors or tradespeople to persons who are subject to inspections, permit reviews, etc.

J. Department Consultations

We are working with the Department of Public Health on revising its internal gift policy and with the Commission on Human Relations to formulate a policy governing its employees' service on non-profit and other boards.

K. Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted seven (7) and denied two (2). By law, we make all granted waivers public on our website.

L. Sister Agency Ethics Officers

In March we met via Zoom with the ethics officers from the other local governmental agencies: the Cook County Board of Ethics, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, Cook County Assessor's Office, Cook County Inspector General's Office (who are responsible for the MWRD) and Chicago Housing Authority. Our next meeting will be in October. This came up at yesterday's Ethics Committee hearing: we do assist our colleagues at the Park District wherever we can.

M. Chicago Casino, the Board's Work per the Illinois Gambling Act

Last Fall, 11 firms responded to the City's RFI (request for information) regarding interest in placing and operating a casino in Chicago. This has triggered reporting requirements, to the Illinois Gaming Board, of City employees and officials who have "communications" with "applicants" regarding "gaming" under the Illinois Gambling Act, 230 ILCS 10/1 et seq. Further, once a casino operator is identified, other requirements under the substantive ethics provisions of that state statute will take effect. Penalties for violating this law are severe: it is a Class 4 Felony under Illinois law, subjecting the violator to fines up to \$25,000 and 1-3 years in prison.

Board staff has worked closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City officials and employees are informed of these reporting (and eventually, substantive ethics) requirements and prohibitions. There were multiple briefings with City Council members and their senior staff. Later briefings with City departments and boards and commissions that explain these laws and requirements will occur in 2021, after responses to the City's recently issued RFP (request for proposals) are analyzed. Note that the Gambling Act's reporting requirements are in addition to any and all restrictions in the City's Governmental Ethics Ordinance that would apply to those "applicants" who "communicate" with City officials or employees, such as the Ordinance's gifts restrictions and lobbyist registration requirements.

N. Summary Index of Board-Initiated Regulatory Actions/Adjudications/pre-2013 Investigations

We post on our website a summary index of all investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board undertook without an IG investigation.

There are two (2) such matters before the Board today.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There have been, to date, 129 such matters. But only in those that occurred after July 1, 2013 can the Board release the names of those found to have violated the Governmental Ethics Ordinance. Since July 1, 2013, alone, there have been 56 such matters.

O. Summary Index of Ongoing IG/LIG Investigations/Adjudications

There is currently one (1) completed IG investigation awaiting adjudication by the Board. The IG sent it to us last Friday evening, August 13. It will be on the agenda for the September meeting for the Board to consider a probable cause finding.

We post on our website and continually update an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (12 since July 1, 2013) and the former Office of the Legislative Inspector General (“LIG”), since January 1, 2012, and the status of all 50 petitions to commence investigations presented to the Board by the LIG. We update it as appropriate, consistent with the Ordinance’s confidentiality provisions. See: <https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/PublicScorecard.pdf>

Whenever the IG presents the Board with a completed ethics investigation in which the IG believes there have been violations of the Governmental Ethics Ordinance, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance: the Board reviews the IG’s report, recommendations, and the entirety of the evidence submitted in its completed ethics investigation, including a review to ensure that the IG conformed with the requirement that it completed ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that ethics investigations were commenced within five (5) years of the last alleged act of misconduct.

Then, if the Board finds that the evidence presented warrants a *prima facie* finding of probable cause to believe the subject violated the Ordinance, it notifies the subject of the allegations and affords the subject the opportunity to present written submissions and meet with the Board, together with an attorney or other representative present. The Ordinance provides that this meeting is *ex parte* – no one from the City’s Law Department or IG is present. Note that the Board may request clarification from the IG as to any evidence adduced in its investigation before making a probable cause finding (and indeed has done so). The Board cannot administer oaths at this meeting but can and does assess the subject’s credibility and the validity and weight of any evidence the subject provides.

If the subject is unable to rebut the Board’s *prima facie* probable cause finding, the Board may enter into a settlement agreement – all settlement agreements are made public – or the Board or subject may decide to proceed to a merits hearing that is not open to the public. That hearing would be held before an administrative law judge (ALJ) appointed by the Department of Administrative Hearings. The City would be represented by the Law Department (or a specially hired Assistant Corporation Counsel for that purpose), and the subject by his or her attorney. At the conclusion of the hearing, the ALJ submits their findings of fact and law to the Board, which can accept or reject them, based solely on the written record of the hearing. The Board will then issue a public opinion in which it finds one or more violations of the Ethics Ordinance (or finds none) and impose appropriate fines.

This process may seem cumbersome. However, it was added to the Ordinance and became effective on July 1, 2013, based on specific recommendations of former Mayor Emanuel’s Ethics Reform Task Force in Part II of its 2012 Report – the primary purposes being (i): to guarantee due process for all those investigated by the IG (or former LIG); (ii) to ensure that **only** the Board of Ethics could make determinations as to whether a person investigated by

the IG violated the Ordinance, given the Board's extensive jurisprudence and unique expertise in ethics matters; and (iii) to balance due process for those investigated by the IG with an accurate and precise adjudication by the Board of Ethics and the public's right to know of ethics violations.

On our website, we have a publication that describes this process in detail: <https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

Note: the fines range from \$500-\$2,000 per violation for non-lobbying law violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for violations occurring after that.

Please note finally that, in all matters adjudicated or settled on or after July 1, 2013, the Board makes public the names of all violators and penalties assessed, or a complete copy of the settlement agreement.

P. Disclosures of Past Violations

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that he or she may self-report to the IG or, if he or she fails to do so within two (2) weeks, the Board must make that report. In 11 matters, the Board has determined that minor violations occurred, and Board sent confidential letters of admonition, as required by Ordinance. These letters are posted on the Board's website, with confidential information redacted out. A twelfth matter is on today's agenda. See: https://www.chicago.gov/city/en/depts/ethics/supp_info/ao_apptoffi1.html

Q. Litigation

Lee v. City of Chicago. In June 2020, the City was sued in Cook County Circuit Court, Chancery Division, by a former City employee of the Civilian Office of Police Accountability (COPA). The case is *Jason W. Lee v. City of Chicago*, 2020 CH 04524. The plaintiff left City employment on February 28, 2020 and works as an attorney for the Policemen's Benevolent and Protective Association ("PBPA"). His suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague, and that the City is improperly attempting to regulate the practice of law by Illinois attorneys. It asked for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. After the matter was briefed by both sides, on July 31, the Honorable Anna Demacopoulos denied the plaintiff's request for a temporary restraining order. The plaintiff was granted leave to file an amended complaint, and filed one, adding an as-applied constitutional challenge. The City moved to dismiss the enter matter. On February 25, Judge Demacopoulos granted the City's motion to dismiss concerning the facial challenge to sections 100(a) and (b) and also the as-applied challenge to section 100(a). The court, however, denied the motion concerning the as-applied challenge to section 100(b), but expressed concern that this claim may be moot. Count III was also dismissed; it asked for a declaratory judgment that, by enforcing the Ordinance, the City is violating PBPA members' right to "counsel of their choice." However, the court granted

plaintiff leave to amend the complaint for all of the dismissed counts. Following the court's order on the City's motion to dismiss, the plaintiff was given leave to file an amended complaint, but he never did. Instead, he decided to move forward on the as-applied vagueness challenge to section 100(b) of the Ordinance. As a reminder, this is the only claim that survived the motion to dismiss. While Judge Demacopoulos questioned whether this claim was moot in light of the expiration of the one year ban that applied to the plaintiff, she left it up to the plaintiff whether he wanted to pursue the claim. Plaintiff may seek compensatory damages if he can prove that he suffered damage. The City filed its answer and affirmative defenses to the amended complaint on April 26.

Note: several PBPA members filed grievances under their collective bargaining agreement, alleging that their right "to counsel of their choice" was violated by COPA. These were settled on terms that do not affect the Governmental Ethics Ordinance's post-employment provisions.

Johnson v. City of Chicago. On October 14, 2020, a now-former elected member of the Library Board of Wilmette (an Illinois unit of local government), sued the City in federal court. The case is *Dan Johnson v. City of Chicago*, No. 1:20cv-06119. The plaintiff asked the court for a preliminary injunction preventing the City from enforcing the "crosslobbying" ban, §2-156-309, on the basis that it violated his rights of free speech and association under the First Amendment of the U.S. Constitution. On May 14, the Honorable John Robert Blakey granted the City's motion to dismiss the suit on mootness grounds, as the plaintiff is no longer a Wilmette elected official, and thus would not be precluded from registering as a lobbyist with our office. However, the dismissal was without prejudice, meaning that a new plaintiff could file a similar lawsuit.

Brookins v. Board of Ethics, et al. This matter is assigned to the Honorable David Atkins in the Chancery Division of Cook County Circuit Court. The Board's and my attorneys have moved to dismiss the entire lawsuit and have submitted briefs. We await a decision.

Czosnyka et al. v. Gardiner et al, docket number is 21-cv-3240. On June 17, several individuals residing in the 45th Ward filed a lawsuit in United States District Court against 45th Ward Alderman James Gardiner and the City, alleging that their 1st Amendment rights were violated by the Alderman's improper blocking of them on his "official" City social media accounts. The plaintiffs seek certification of a class of all those improperly blocked by the Alderman. The suit also alleges that more than 20 complaints of improper blocking have been filed with the Board and the OIG, but to date the City has "failed to take any action to reprimand Alderman Gardiner, although it has the power to do so," and thus "has acquiesced in [the Alderman's] constitutional violations." It seeks to have the plaintiffs reinstated as full participants in these social media accounts and unspecified damages. Both parties have been served, and the case is assigned to the Honorable Magistrate Judge Sharon J. Coleman. The City has moved to dismiss the matter on the bases that: i) plaintiffs have no standing; and ii) plaintiffs fail to state a claim that would survive a *Monell* challenge for holding a municipality liable for acts committed by an individual. Note that Alderman Gardiner has retained independent counsel and had until August 25 to respond to the complaint.

R. Freedom of Information Act

Since the last Board meeting, the Board has received three (3) requests.

The first was a City-wide request for records of any communications between the Board and others regarding R. Kelly. We had no responsive document and responded per the advice of the Law Department.

The second was for documents “showing the ethical obligations of elected City officials regarding barring people from public events.” We responded by providing a link to the Governmental Ethics Ordinance

The third was for documents “showing ethical authority of an elected official to post signs in a City office building stating: “PHOTOGRAPHY AND VIDEOGRAPHY STRICTLY PROHIBITED IN THIS OFFICE.” We responded by providing a link to the Governmental Ethics Ordinance.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

None

VII. NEW BUSINESS

None

VIII. PRIOR BOARD MEETING’S EXECUTIVE SESSION MINUTES

Discussion regarding approval of the Executive Session Minutes of the August 23, 2021 meeting.

The Board will consider this matter in Executive Session.

At 3:04 p.m., the Board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to adjourn into Executive Session under: (i) 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act; (ii) 5 ILCS 120/2(c)(4) to hear and discuss evidence or testimony in closed hearing as specifically authorized pursuant to Governmental Ethics Ordinance Sections 2-156-385 and -392, and the Board’s Rules and Regulations, as amended, effective January 5, 2017, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

The members of the public were asked to leave the Executive Session of the meeting and advised that they would be invited into the reconvened Open Session of the meeting.

At 4:52 the Board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The members of the public were invited to rejoin the Open Session.

IX MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in Executive Session and VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) in Open Session, to approve the Executive Session minutes of the August 23, 2021 meeting.

II. OLD BUSINESS

None

III. CASEWORK

A. Meeting With Respondent After Board's Probable Cause Finding

1. Case No. 21019.L, Unregistered Lobbying

The board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to determine that the Respondent violated the unregistered lobbying provision of the Ordinance and to fine him FIVE THOUSAND (\$5,000) DOLLARS and make his name and violation public pursuant to the Ordinance.

B. Consideration of Report from the Office of Inspector General Pursuant to §§2-156-385(1)-(3) of the Governmental Ethics Ordinance

2. Case No. 21027.IG, Unregistered Lobbying

The board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to find there is probable cause to conclude, based on a completed investigation by the Office of Inspector General ("IG"), that a then-registered lobbyist lobbied City officials on three separate occasions without ever having registered to lobby for those particular clients. The individual, who has since terminated their entire lobbyist registration, will now be entitled to meet with the Board to attempt to rebut that probable cause finding.

C. Advisory Opinion

3. Case No. 21028.C, Minor Violation—Representation of Other Persons

The board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to affirm that a City employee committed a minor violation of § 2-156-090(a) of the Ordinance dealing with representation of other persons. The employee was issued a confidential admonition.

D. Report of Complaints Received or Referred

4. Case No. 21029.C, Fiduciary Duty, Aspirational Code of Conduct

Based on publicly available documents, the Board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) that:

- (i) there is probable cause to conclude that a City official violated §2-156-060 (entitled “Unauthorized use of real or personal City property”) on two (2) separate occasions by: a) directing a City employee under the official’s supervision to consider and discuss with the official withholding City services to a constituent because the constituent appears to have supported a political opponent of the official, and b) directing a City employee under the official’s supervision to obtain and “leak” to social media criminal records of a constituent who had taken a position on a matter different from the official’s; and
- (ii) directing City employees under one’s supervision to take these actions while on City time violates the City-owned property provision of the Ordinance as a matter of law; and
- (iii) while the Ordinance precludes the Board from enforcing the “aspirational code of conduct” (§2-156-005), §2-156--005 (a)(4) and (5) of that aspirational code, respectively, require City officials and employees to “treat members of the public with respect and be responsive and forthcoming in their requests for information” and “act impartially in the performance of their duties, so that no private organization or individual is given preferential treatment.” Failure to adhere to these standards is *per se* unethical; and
- (iv) to request that the IG investigate, as necessary, other instances where this official’s conduct may have violated these Ordinance provisions.

The official will have the opportunity to meet with the Board and attempt to rebut the Board’s probable cause findings. If the official is unable to do so, the Board will enter a final, appealable, public determination addressing whether the official violated the City-owned property provision of the Ordinance (as well as the aspirational code of conduct) and impose appropriate fines for any such violations found.

X. OTHER BUSINESS

None

At 4:59 p.m., the Board VOTED 4-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to adjourn the meeting.

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