

Executive Director's Report February 17, 2023

Education

On-line Training

For all employees and officials. The deadline for all City employees and officials to complete the mandatory 2022 on-line ethics program was before January 1, 2023. As required by law, we notified all employees and officials who, our records, showed, had not completed the training by then. There were an additional 140 employees began their City service on or after November 1, 2022, and we extended the deadline for them to complete the training to before February 15, 2023 before they would be found in violation and subject to fines. Our enforcement efforts were delayed because there are several departments whose personnel databases were not up to date, and it took staff days to cull out names of employees who had left City service prior to December 31, 2022. But, yesterday, we posted the names of 169 employees and officials, who were determined to have violated the Ordinance for failing to complete the training by the deadlines, and failed to provide an acceptable reason for doing so. 11 are subject to fines of \$250/day, beginning January 24.

We are grateful to our colleagues at the Department of Human Resources for their invaluable assistance in migrating the training programs to the City's e-learning management platform, as well as assisting us with the sexual harassment portions of each year's training program. The migration enables users to take the training from *any* computer, including their home computers, and also saves the City \$5,000 in annual software licensing fees. Previous training programs were intentionally designed to be taken only from City computers, for security reasons.

We are working on the 2023 edition, and intend to have it posted Mid-March.

For lobbyists. The all-new 2022-2023 lobbyist training was posted in late January, and already 227 lobbyists have completed it. The deadline for completing it is before July 1, 2023.

Classes and other presentations

We cancelled all in-person classes from March 2020 on, given the course of the pandemic. We are extending all training deadlines accordingly. All Board classes and educational programs cover sexual harassment. We will resume these classes as soon as it's feasible to do so.

On February 16, 2023, we made a presentation to the Department of Aviation at its Commissioner's request, and on February 22, we will conduct a review class for Mayor's Office personnel at the request of the Chief of Staff.

Advisory Opinions

Since the Board's last meeting, we have issued 324 informal advisory opinions—an extremely busy period. The leading categories for informal opinions were, in descending order: Political Activity—which constituted 2/3 of all inquiries we have received in this time; Gifts; Travel; Campaign Financing; City Property; Post-employment; and Lobbying. The focus on political activity is expected, as the Consolidated Municipal Elections approach.

The leading City departments from which requesters came in this period were, in descending order: City Council; Police Department/Civilian Office of Police Accountability (COPA)/Community Commission for Public Safety and Accountability (CCPSA); Mayor's Office; Department of Family and Support Services; Chicago Public Library; Department of Public Health; Department of Aviation; and Office of Inspector General ("IG"). As is typical, about 80% of these inquiries came from City employees or elected officials, another 10% from lobbyists or potential lobbyists, and the rest from attorneys, vendors, candidates for elected City office, or campaign contributors.

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. Formal opinions are made public, in full text, with names and other identifying information redacted out.

In the past five (5) years, the Board has issued 67 formal opinions. There is a possible advisory opinion on today's agenda, to be discussed in Executive Session.

Citizen Complaints

Since the last Board meeting, the Board has continued to receive a record number of complaints from citizens and others—more than 30. All but three (3) of these are election-related, involving allegations of prohibited political activity or politically/election-related misuse of City property.

The Board can do one of three (3) things with such complaints: (i) the vast majority are referred to the IG because they require a factual investigation; (ii) some can be dismissed outright, and, where appropriate or feasible, we direct the complainant to the correct entity to address their complaint; or (iii) if the complaint needs no further investigation, and appears to state a *prima facie* violation of the Governmental Ethics Ordinance, the Board can consider issuing a 10-day notice to the subject that the Board intends to make a probable cause finding, per §2-156-390, which took effect October 1, 2022.

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 920), redacted in accordance with the Ordinance’s confidentiality provisions, here:

https://www.chicago.gov/city/en/depts/ethics/auto_generated/reg_archives.html.

Redacted formal opinions are posted once issued or approved by the Board. Summaries and keywords for each of these opinions—and a link to each opinion’s text, which we added since the August Board meeting—are available on the Board’s searchable index of opinions, here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/AOindex.docx>.

Only a few 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.

2023 Statements of Financial Interests

On February 28/March 1, as required by law, we will notify ~3,700 City employees and officials required to file 2023 Statements of Financial Interests (“FIS forms”) of their requirement to file by 11:59:59 pm Monday, May 1, and provide the link to file electronically. We sent out spreadsheets to all departments and Ward offices and City Council Committees with last year’s filers and asked them to update their lists for 2023.

Statements of Financial Interests filed by Candidates for Elected City Office

The Ordinance requires that all candidates for elected City office file an FIS within five (5) days of qualifying as a candidate. This includes all candidates for the newly created offices of District Police Councils (up to 66 positions). Note that all currently serving elected officials running for re-election or for different offices from those they currently hold have filed. All candidates’ forms are posted on our website, at this link:

https://www.chicago.gov/content/city/en/depts/ethics/supp_info/CandidateFIS2023.html

All current employees or officials who have already filed and who are candidates have their forms posted here:

<https://webapps1.chicago.gov/efis/search>

Lobbyists Filings

There are currently 779 lobbyists registered with us, and we have collected \$322,950 in 2023 registration fees.

On February 9, after sending out due process notices as required by law, we found 26 lobbyists in violation of the Ordinance for failing to re-register or terminate as required, and fined 15 of them a total of \$25,000—two (2) of them face ongoing daily \$250 fines.

On February 14, we sent due process notices to 14 lobbyists for their failure to timely file Q4 2022 activity reports, which were due February 8, 2023. The February 14 notice requires filing by 11:59 p.m. Friday, February 24, 2023. Those who do not file will be subject to fines of \$1,000 per City business day, beginning February 27, 2023.

We regularly revise the posting of all registered lobbyists and their clients here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/LobbyistStuff/LISTS/LobbyistList.xls> and their filing data is available here: https://webapps1.chicago.gov/elf/public_search.html

Lobbying Law Revisions

In late January we met with representatives from the Mayor's Office and the philanthropic and public charity communities to discuss potential amendments to the lobbying laws as to registration by individuals who lobby on behalf of non-profit organizations. The current thinking is to include activity and/or compensation thresholds, such that individuals would be required to register once they lobby a specified number of hours in a calendar quarter and/or are compensated a specified amount or more for lobbying in a calendar quarter. Note that: 1) this is precisely how peer cities like New York, Philadelphia, and Los Angeles regulate lobbying on behalf of non-profits and others; and 2) as in those cities, it will require personnel who lobby to keep time records, and make reasonable calculations as to their hours and compensation (as many are not compensated explicitly for lobbying, unlike for-profit contract lobbyists).

Update of Vendor Databases

As required by law, the City's Department of Assets, Information and Services ("AIS") maintains a database of persons/entities that are doing and have done business with the City (as that term is defined in the Ordinance) going back about eight (8) years, to aid political committees and candidates who receive political contributions in excess of \$1,500. That database was first developed in 1998. For the past few months, we have worked closely with the Mayor's Office, AIS, the Department of Finance, and the Department of Procurement Services to improve that database, and have met with the City's sister agencies to assist them in making their lists of persons that have done business with them available and easy-to-use. The Ordinance provides that any person who relies on this list is not in violation of the Ordinance's contribution restrictions if the purported violation relates to the identity of the contributor.

A new, improved database of persons who have done business with the City was posted in late January, here: https://www.chicago.gov/city/en/depts/ethics/supp_info/list-of-contractors.html

Chicago Casino

As to the development of the Casino, we issued guidance on lobbying to all elected officials, at the Mayor's request, and we issued guidance on the restrictions in the Ordinance for the ~80 City employees and officials who worked on the process of selecting the Casino operator, also at Mayor's request. We have worked closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City personnel are informed of all reporting (and eventually, substantive ethics) requirements and prohibitions under the Illinois Gambling Act, 230 ILCS 10/1 et seq. Penalties for violating this law are severe: it is a Class 4 Felony under Illinois law, subjecting violators to fines up to \$25,000 and 1-3 years in prison. Note that the Gambling Act's reporting requirements are in addition to the restrictions in the 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.

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.

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

We post 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, based on probable cause findings the Board makes as a result of its review of publicly available information, where no factual investigation by the IG is necessary. *See*

<https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/Invest-Index.pdf>

The Board makes public the names of all violators and penalties it assesses when authorized by law to do so. There have been, to date, 137 such matters, and there are an additional 20 matters on today's agenda. But only in those that occurred after July 1, 2013, can the Board release the names of those found to have violated the Ordinance. Since July 1, 2013, there have been 86 such matters.

Summary Index of Ongoing/Past IG/LIG Investigations/Adjudications

There are currently no completed IG ethics investigations awaiting adjudication.

We post on our website and continually update an ongoing investigative record showing the status of every completed

investigation brought to the Board by both the Office of Inspector General (13 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/PulbicScorecard.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 complete 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 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 does not rebut the Board’s *prima facie* probable cause finding, the Board may enter into a public settlement agreement—or the Board or subject may decide to proceed to a merits hearing that is not open to the public. That hearing is 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 their attorney. At the conclusion of the hearing, the ALJ submits 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 may find violations of the Ethics Ordinance and impose appropriate fine, or find none and dismiss the matter.

The process may seem cumbersome. However, it was added to the Ordinance on July 1, 2013, based on specific recommendations of then-Mayor Emanuel’s Ethics Reform Task Force in Part II of its 2012 Report—the primary purposes being to: (i) guarantee due process for all those investigated by the IG (or former LIG); (ii) 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) balance due process for those investigated by the IG with an accurate adjudication by the Board and the public’s right to know of ethics violations.

On our website, we have a publication describing this process in detail:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

Note: fines range from \$500-\$2,000 per violation for non-lobbying or non-campaign financing violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for such violations occurring between September 29, 2019 and September 30, 2022. For violations occurring on or after October 1, 2022, the fine range is between \$500 and \$20,000 per violation, and the Board may also assess a fine equal to any ill-gotten financial gains as a result of any Ordinance violation. Fines for unregistered lobbying violations remain at \$1,000 per day beginning on the fifth day after the individual first engaged in lobbying and continuing until the individual registers as a lobbyist.

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. All settlement agreements are posted here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/SettlementAgreements.html>

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 they 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 they 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 the Board sent confidential letters of admonition, as required by the Ordinance. These letters are posted on the Board's website, with confidential information redacted out. There is a matter on today's Executive Session agenda involving a possible minor violation.

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, 2020, 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, 2021, 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. This is the only claim that survived the motion to dismiss. Judge Demacopoulos questioned whether this claim was moot in light of the expiration of the one year ban that applied to the plaintiff but 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, 2021. The plaintiff filed discovery requests. Board legal staff met with our attorneys in the Law Department and forwarded materials necessary to respond to these requests. There have been discussions regarding possible settlement of the matter as well, but the offer made by plaintiff to settle the matter was rejected, and we have made a counter-offer. Our next Settlement Conference is March 9.

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 Ethics Ordinance's post-employment provisions.

Brookins v. Board of Ethics, et al. We learned just two (2) days ago that the Honorable David Atkins in the Chancery Division of Cook County Circuit Court issued a ruling on October 18, 2002. The Judge dismissed every count in Alderman Brookins's lawsuit against the Board and me personally except Count I, including dismissing the Count in which Alderman Brookins accused me of defamation *per se*. The remaining Count asks for a writ of certiorari to review the Board's decision to find him in violation of the Ordinance's Fiduciary Duty provision, alleging that the Board did not have jurisdiction or authority to find probable cause, nor to have a hearing, nor to find him in violation, nor to fine him, and that the Board did not provide him proper notice because we sent our findings to an attorney, who, he alleges, was hired solely for the purpose of sending a letter to the Inspector General to request an investigation of me, not to represent him in this Board matter. There will be a status hearing before the Court on April 18, and the Law Department is representing the Board. Alderman Brookins is not running for re-election. There will be more on this matter in closed session.

Czosnyka et al. v. Gardiner et al., docket number is 21-cv-3240. We and the City of Chicago are now dismissed out of this case. On June 17, six (6) individuals residing in the 45th Ward filed a lawsuit in United States District Court against 45th Ward Ald. James Gardiner and the City, alleging that their 1st Amendment rights were violated by the Ald.'s improper blocking of them on his "official" City social media accounts. The plaintiffs sought certification of a class of all those improperly blocked by the Ald. The suit also alleged that more than 20 complaints of improper blocking were filed with the Board and the IG, but the City "failed to take any action to reprimand Alderman Gardiner, although it has the power

to do so,” and thus “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. The case is before the Honorable Judge Sharon J. Coleman.

On October 26, 2021, Judge Coleman granted the City’s motion to dismiss it from the suit, and on January 12, 2022, denied the plaintiffs’ motion to reconsider her decision. Plaintiffs could appeal this decision to the Seventh Circuit Court of Appeals. The residents sought to hold the City liable under the “failure to discipline” *Monell* theory of municipal liability. Specifically, they argued that the City should be held liable for failing to investigate Ald. Gardiner through the IG and also for failing to fine him through the Board of Ethics.

Note that Ald. Gardiner retained independent counsel and moved to dismiss the suit on the basis that the social media site does not constitute an “official City site.” On February 10, 2022, Judge Coleman denied that motion, writing that:

“plaintiffs have plausibly alleged that Alderman Gardiner restricted their access to a public forum in violation of the First Amendment by barring them or deleting their comments from the interactive portions of his Facebook Page that designates Alderman Gardiner as a government official. These facts raise a reasonable inference that plaintiffs are not alone in suffering constitutional injuries resulting from Alderman Gardiner’s practices. Moreover, plaintiffs have set forth sufficiently detailed allegations that Alderman Gardiner knowingly banned constituents and engaged in content-based regulation of speech on his Facebook Page. Further, he did so unilaterally while seeking out engagement from users.”

On June 1, 2022, both the Board and IG received subpoenas from the plaintiff for internal records on this matter. We coordinated our response with the Law Department.

Open Meetings Act Challenges

The Board is now involved in four (4) challenges recently filed with the Illinois Attorney General by the same objector regarding its discussions in Executive Session. The Board has working with the Law Department and responded to each.

FOIA Challenge

We have been challenged for withholding documents relating to Board Case 22033.Q, concerning an advisory opinion the Board approved at the November 2022 meeting. We are working with the Law Department on this matter as well. The challenger is the same individual who brought the two (2) OMA challenges noted above. This matter is also pending before the Public Access Counsel at the Illinois Attorney General’s Office.

Freedom of Information Act

Since the last Board meeting, the Board has received three (3) requests. The first was for complaints against an elected official; we responded by stating that the information was confidential pursuant to the Ordinance. The second was for the Board’s description of itself, FOIA procedures, address and training certificates; we responded by asking for specificity on the certificates and providing website links for the other information. The third requests emails between City employees and a third party; staff responded by stating the request was burdensome and requested that it be narrowed.

Employee Vaccination Status

I’m pleased to report that all seven (7) staff members are fully vaccinated for Covid-19, and in compliance with the City’s policy on vaccinations.