

## Executive Director's Report April 11, 2022

### Amendments to the Ordinance

We have been working closely with Chair Michele Smith of the City Council's Committee on Ethics and Government Oversight and her staff on potential amendments to the Ordinance, likely to be presented in April. The proposed amendments are based on many of the recommendations the Board made to the Mayor and City Council in late May 2019, which are published here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/memos/PressRelMay2019.pdf>. We have also reviewed suggestions made by the Better Government Association, and one by another City Council member, and some of these may be incorporated into the proposal too.

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>

### Education

#### On-line Training

**For all employees and aldermen.** The all new employee/Elected Official training was posted on the City's e-learning platform. To date, approximately 15,190 employees and 18 City Council members have completed it. This represents about 50% of the expected City-wide total. This program must be completed before January 1, 2023; those who fail to complete it will be subject to penalties of \$250 per day until they do. 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 pc's. Previous training programs were deliberately designed to be taken only from City computers, for security reasons.

**For lobbyists.** To date, 442 lobbyists have completed the mandatory annual training, which is also posted on the City-wide e-learning system. This represents 55% of our registered lobbyists so far for 2022. Lobbyists must complete the program before July 1, 2022 or be subject to fines of \$250 per day until the complete it.

**For appointed officials.** We are working on an all-new program for appointed officials and should have it posted later this Spring. As with the all-employee/Elected official training, it will be hosted on the City's e-learning platform.

#### Classes and other presentations

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

On May 4, I will be a co-panelist along with a representative from the Illinois Secretary of State's Office for a one-hour presentation on the City's and State's lobbying laws, before the Local Government Committee of the Chicago Bar Association.

On June 6, I will make a one-hour presentation on revolving door restrictions for the International Municipal Lawyers Association ("IMLA"). My co-presenters will be representatives from the Los Angeles City Ethics Commission and Pittsburgh Ethics Hearing Board.

On June 13, I will make a 30-minute presentation on the City's ethics laws to all Mayoral Fellows, at the invitation of the Mayor's Office.

We are scheduling a class for new 11<sup>th</sup> Ward Ald. Nicole Lee and her staff, which should occur in early May.

### **Advisory Opinions**

Since the Board's last meeting, we have issued 332 informal advisory opinions. The leading categories for informal opinions were, in descending order: Statements of Financial Interests; Gifts; Travel; Political Activity; City Property; Lobbying; Conflicts of Interests; and Employment of Relatives.

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 Public Health; Fire Department; and Department of Finance/Chief Financial Officer.

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 64 formal opinions.

### **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 915), redacted in accordance with the Ordinance's confidentiality provisions, here:

[https://www.chicago.gov/city/en/depts/ethics/auto\\_generated/reg\\_archives.html](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/AOindex.docx>. We are working to add to this document live links to the full text of each opinion.

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.

### **2022 Statements of Financial Interests**

On February 28/March 1, as required by law, we notified 3,641 City employees and officials required to file 2022 Statements of their requirement to file and provided the link to file electronically. Since then, 97 individuals were added as filers by their departments: new hires, and those whose positions were re-classified into titles requiring them to file. To date, ~2,550 have filed, about 68% of the total. The filing deadline is before May 3, 2022.. Those who do not file by then will be sent probable cause notices; if they do not present a valid excuse for their late filing, they will be fined \$250/day until they file, beginning May 3, 2022.

We sent email reminder notices to all non-filers on March 31 and April 7 and will send more reminders to non-filers before the deadline. Staff is also working with our ethics liaisons in all City departments, Ward offices, City Council committees, and the Office of Intergovernmental Affairs to help ensure that everyone files on time.

Note: as new filers are added by each department as new hires or promotions are made, these newly added filers receive their notice to file within 24 hours of being added to the system.

### **Lobbyists: Re-registration and Q4 Reports**

Currently there are 804 registered lobbyists. At this writing we do not have an exact figure of how much revenue we have collected in 2022 lobbyist registration fees—the Department of Finance is looking into it. Their system shows on its face that revenue went down from last month, which is not possible; they believe that a cashier made an error in the past few month and are looking into it so that our account and any other departments' accounts show the correct revenue.

We post updated lists of all lobbyists and their clients and contact information about once each month, at this link:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/LobbyistStuff/LISTS/LobbyistList.xls>

Note that we did have a slight decrease in the number of registered lobbyists in the past month, due to a relatively higher number of registration terminations.

1<sup>st</sup> Quarter lobbying activity reports are due before April 21. Those who fail to file by then will receive a reminder notification and then will have 10 days from the date of the notice to file; if they do not, they will receive a due process notice to file within 7 days or be subject to late filing penalties of \$1,000 per day until they file.

### **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.

### **Department Consultations**

In the last few months, we assisted the Department of Streets & Sanitation in revising its conflicts of interests policies with respect to recommending outside business to residents, at the request of the Mayor's Office and the Department's Commissioner.

We also are working with the Commission on Human Relations to formulate a policy governing its employees' service on non-profit and other boards.

We also consulted with the Budget Office as to applicable ethics restrictions on the new Community Microgrants Program.

At the Mayor's directive we issued an ethics guide to evaluating and awarding CRP grants and contracts and as mentioned above, have offered each department a training session on the ethics guidelines.

### **Chicago Casino bids**

As was widely reported, the City received five (5) bids for a Chicago casino, and there are three (3) finalists. We issued guidance on lobbying to all elected officials last week, at the request of the Mayor. And, last month, issued guidance on the restrictions in the Ordinance for the ~80 City employees and officials who are working on the process of selecting the Casino operator, also at the request of the Mayor. Board staff 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 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 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.

### **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.

### **Sister Agency Ethics Officers**

We will meet next in May 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 Metropolitan Water Reclamation District), and the Chicago Housing Authority.

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

We post the 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. 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, 130 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 Ordinance. Since July 1, 2013, alone, there have been 59 such matters.

### **Summary Index of Ongoing 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 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 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 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 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, or find none, and impose appropriate fines.

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 law violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for violations occurring after that, except for unregistered lobbying violations, the penalties for which are \$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 one such matter on today's agenda, which was continued from last month.

### **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.

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.

*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. We and the City of Chicago are now dismissed out of this case. On June 17, six (6) individuals residing in the 45<sup>th</sup> Ward filed a lawsuit in United States District Court against 45<sup>th</sup> Ward Ald. James Gardiner and the City, alleging that their 1<sup>st</sup> 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."

### **Freedom of Information Act**

Since the last Board meeting, the Board has received 11 requests.

The first was for records for annual public hearings on ethics; we advised that no records were located.

The second was for record(s) on City policies regarding using private devices and City business; we advised that no records were located.

The third was for inquiries we received regarding whether lobbyists' and City employees' or officials' spouses were incomplete in documents filed with the office; we advised that if there are such records they are confidential.

The fourth was addressed to the zoning committee; we advised we were the wrong department.

The fifth was for issued FOIA denials citing Illinois law's exception 7(1)(m) between 1-1-21 and 3-15-22, inclusive; we advised that no records were located.

The sixth was for invoice, payments and engagement letters between the Board and outside counsel between 1-1-21 and 3-15-22, inclusive; we advised that no records were located.

The seventh was for records for the Board on annual public hearings on ethics; we advised that no records were located.

The eighth was for a City Council member's 2021 personnel records, statement of financial interests, and records showing who lobbied the member; we responded with links for lobbyist reports and statements of financial interests, but also that employment records are confidential, and we are wrong department from which to request such records.

The ninth was similar to the eighth and was for employment records and statements of financial interests for the same City Council member and the member's Chief of Staff; our response was virtually the same as the eighth response.

The tenth was for records showing advice and acknowledgement within the agency on digital policy; we advised the requestor we have no records.

The eleventh was for the procedure for the public to request comment at a Board meeting; we sent the requestor links to the Board's Rules, which address this at length in Rule 2-11.

**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.