



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

---

---

## Management Response Form

---

---

Project Title and Number: Lobbyist Registration Audit (OIG File #14-0328)

Department Name: Board of Ethics

Commissioner/Department Head: Steven I. Berlin, Executive Director

Date: January 22, 2016

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
--------------------	----------------	------------------------------	--------------------------	-------------------



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
1. OIG recommends that BOE exercise its authority "to recommend policies, procedures and practices designed to ensure compliance with any federal, state or local law or regulation or any of the city's compliance-related polices and internal controls" to implement more robust quality assurance best practices. This may include the quality assurance best practices observed in other jurisdictions such as requiring both lobbyists and their employers to register with the City, requiring public officials to report having been lobbied, conducting routine audits of lobbyist disclosures, and/or comparing lobbyist disclosures to disclosures made to the government entities of	The Board neither agrees nor disagrees, but requires further empirical research in order to be in a position to determine whether to recommend that such changes in the law be enacted by City Council.	<p>The Board of Ethics (the "Board") concludes that the recommendations in the OIG's Audit Report (the "Report") are not required, unless empirical research is performed into whether additional lobbyist or lobbyist-client/employer information that might be gathered from amending the Governmental Ethics Ordinance as described in the Report would provide significant added value.</p> <p>The Report does cite some interesting practices gleaned from a survey of a few other jurisdictions that regulate lobbyists. However, the Report does not identify "best practices" with respect to providing "robust quality assurance" that lobbyists' disclosures are accurate, or with respect to identifying non-compliant lobbyists. There really are no commonly recognized "best practices" in this field. The Board of Ethics has, for more than two decades, been an active member of the Council on Government Ethics Laws, or "COGEL," together with other major jurisdictions that regulate lobbyists in North America, and carefully keeps up</p>	By January 2017.	City Council, except for ## 1 and 4 below, which are within the purview of the Board of Ethics.



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
<p>neighboring jurisdictions. If BOE cannot unilaterally implement these quality assurance practices, OIG recommends that the Board collaborate with the City Council to do so.</p> <p>In addition, we recommend that BOE include under the lobbyist registration signature line a reference to the penalty for providing false statements.</p>		<p>with developments in the field of lobbyist regulation.</p> <p>Specifically, our responses to the Report's recommendations are:</p> <ol style="list-style-type: none"> <li>1. The Report states that some other jurisdictions' lobbying laws: (i) require government officials or employees to report having been lobbied (including the State of Illinois's Lobbyist Registration Act); and (ii) require lobbyists' employers or clients to register (these persons are typically called "lobbyists' principals"). And, the Report states that (as the Board's educational materials and required annual trainings for employees and officials state), Chicago's law does neither.</li> </ol> <p>As to (i), above, on May 17, 2011, the Board submitted to the Mayor's Office and members of City Council a long list of suggested amendments to the Governmental Ethics Ordinance (many of them were then adopted by the Mayor's Ethics Reform</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>Task Force and ultimately made into law). Among these was amending the Ordinance to require lobbyists to disclose the names of City employees and officials whom they actually lobbied (this is not precisely what the OIG Report alludes to, but it goes to same kind of information sought). This proposed change was not adopted by the Task Force, and did not end up in the changes to the Ordinance based on the Task Force's written Report. The Board continues to see some upside to <b>that</b> amendment, but it is a matter for lawmakers to consider. However, as the Board has learned through COGEL, it is not without its problems in implementing and enforcing. Requiring City employees and officials to file reports whenever they are lobbied (as contrasted with requiring lobbyists to report the names of personnel they have lobbied), as the OIG'S Report suggests, is a requirement of a different order. Recommending it presupposes conclusive research into its effectiveness. The Report does not provide that research.</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>As to (ii) above, given the requirements imposed on lobbyists under current City law, an amendment that would require lobbyists' clients or employers ("principals") to register is of questionable value, given that registered lobbyists must <i>already</i> identify their clients by name, address, and business interest, and disclose information about their lobbying activity on these clients' behalf every quarter. The Board makes all of this information available quickly and accurately through the Board's website and the City's Socrata Data Portal. (The Report does not question the vitality or availability of this information.) Requiring nearly 5,000 additional persons to register with the Board (and pay registration fees, which the City Council would need to establish, and which must be tied to the actual cost of administering the lobbying registration program in the first place) might well provide more revenue to the City. But, it would also entail a significantly greater burden on registrants and the business and non-profit communities (known collectively as "the regulated</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>community"). The Board does not allow entity registration; thus, the law would need to be amended to allow that, or, alternatively, each client/employer would be required to identify each of its employees or officers working on a particular matter. That is a disclosure requirement which, the Board predicts, would be perceived as, and actually would be, burdensome—particularly to non-profits, as personnel in these entities change frequently. Such added requirements would also increase the "transaction" costs of entering into business with the City of Chicago, thereby fostering the perception that the City is mired in "red tape," while providing marginally more information. Moreover, given the Board staff's size (8 full-time employees), we believe that it may well require hiring an additional staff member.</p> <p>In other words, recommending this change, and balancing its costs and benefits, is not a matter that the Board can address based on this audit report.</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>As we stated above, the Board is an active member of COGEL, along with lobbying regulators from many U.S. states, Canadian provinces, large U.S. cities, and various branches of the U.S. and Canadian federal governments. One of COGEL's program areas is interpreting, administering, and improving lobbying laws. While it is true that some jurisdictions' laws (such as the State of Illinois's) require government officials to make disclosures of when they are lobbied, or require lobbyists' principals to register, neither is recognized as a "best practice."</p> <p>Nonetheless, the Board will research these suggestions further, and then determine whether to propose amendments to the City Council that might address what the Report sketches out.</p> <p>2) As to the recommendation that the Board conduct "routine audits" of lobbyists' disclosures, it is not clear what form such "audits" would take. The Board would need to identify and analyze</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>empirical research into whether those jurisdictions that the OIG believes have more "robust" lobbying regulation structures themselves have concluded that such measures actually result in more meaningful information for the public and for those lobbied. This empirical research has not been provided.</p> <p>In any event, the Board's practice is to <i>examine carefully every lobbyist's submitted filings</i> (regardless whether filed electronically or on paper) <i>to ascertain whether there are apparent, prima facie violations of the Ordinance or Mayoral Executive Order</i>, specifically, the provisions: (i) banning excessive gifts (§2-156-142); (ii) limiting or banning political contributions (under §2-156-445(a), registered lobbyists are subject to annual contribution limitations, and under Mayoral Executive Order 2011-2, registered lobbyists are banned from making political contributions to the Mayor and/or his authorized political committee); and (iii) prohibiting contingency fee arrangements</p>		





# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>(§2-156-300). The Board takes appropriate follow-up action when apparent violations are detected; this could mean referring the matter to the appropriate investigative authority, such as the OIG. In fact, on February 18, 2015, the Board did detect an apparent violation of the Ordinance's campaign contribution law by a registered lobbyist, and did refer the apparent violation to the OIG (Board case 15007.CF) for investigation. As the Board explained to the OIG in its referral, Board staff detected the apparent violation while processing lobbyists' forms, and the Board filed the matter as a complaint with the OIG against both the lobbyist and the elected official (technically, that official's political committee). The OIG has not reported any information or results to the Board on any investigation it may have commenced.</p> <p>The Board believes that this kind of monitoring of lobbyists' filings is sufficient.</p> <p>The OIG may be suggesting that the Board audit the</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p><i>accuracy</i> of lobbyists' disclosures. However, under current law, the Board of Ethics does not have authority to audit lobbyists' disclosures generally <i>as to their accuracy</i>. Aside from those instances in which the Board's <i>prima facie</i> examination indicates a possible contingency fee, excessive gifting, or political contribution violation (as described above), attempting to verify the <i>accuracy</i> of selected lobbyists' disclosures is, in the Board's judgment, an investigation, and of questionable value considering the Board's resources and considering that lobbyists already must, under current law, certify their disclosures, and are subject to penalties should they be determined to have made false declarations.</p> <p>Without an amendment to the Ordinance, such a practice could be challenged in court by a lobbyist as <i>ultra vires</i>—beyond the Board's authority—as it could reasonably held to constitute an investigation, which the Board has no authority to conduct. Moreover, under the OIG's <i>own</i> enabling</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

Joseph M. Ferguson

*Inspector General*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>Ordinance, chapter 2-56 of the Municipal Code, the OIG itself has authority to commence an investigation into whether a lobbyist's disclosures are inaccurate.</p> <p>Instead, the Board concludes, it is of more vital importance that: (i) the City's workforce, the public, and media have access to this information quickly and accurately, so that, in the event there were a discrepancy between what a lobbyist has reported and what a City employee, official or member of the business community or media knows or believes, the lobbyist could become the subject of a complaint that is properly and thoroughly investigated; and (ii) as has been the case under long-standing Board practice, every filing be examined for potential violations of the Ordinance (but not for accuracy), and where appropriate, referred for investigation.</p> <p>Finally, the Report does not identify problems with the <i>accuracy</i> of the disclosures received and posted</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>by the Board. We note that the Sunlight Foundation has recognized Chicago as "hav[ing] among the strongest lobbying disclosure practices." See <a href="https://www.bostonglobe.com/metro/2016/01/09/walsh-pursue-municipal-lobbying-regulations/GOPijB7aMazUafLNmb3JQP/story.html">https://www.bostonglobe.com/metro/2016/01/09/walsh-pursue-municipal-lobbying-regulations/GOPijB7aMazUafLNmb3JQP/story.html</a> and see the website of Chicago Lobbyists, which even further analyzes data made available through disclosures filed with the Board of Ethics. <a href="http://sunlightfoundation.com/api/community/#9">http://sunlightfoundation.com/api/community/#9</a></p> <p>3) The Report also suggests that the Board compare lobbyists' disclosures filed with other neighboring jurisdictions, arguing that this would help provide "reasonable assurance" as to the accuracy of the information reported to the Board by lobbyists and then made available to the public.</p> <p>In the Board's judgment, it is questionable that any benefit would be produced by having Board staff compare lobbying reports filed with neighboring jurisdictions. This is because jurisdictions across</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>the U.S. and Canada define "lobbyist" or "lobbying" quite differently in their laws. Thus, for example, if a lobbyist is registered with the Secretary of State's Office in Springfield to "lobby" the State Police, but is not registered with the City to lobby the Chicago Police Department, it is unclear whether this knowledge would be useful, or to whom, because activity that triggers the requirement to register as a lobbyist in one jurisdiction does not necessarily trigger it in another. Nor is it clear that this knowledge itself would provide reasonable cause to file a complaint or commence an investigation for unregistered lobbying.</p> <p>Instead, the Board has made and will continue to make concerted efforts to educate City employees, officials and the "regulated community" at large (the latter with the assistance of and in coordination with the Departments of Procurement Services, Planning &amp; Development, and Aviation) as to when lobbyist registration is required. City employees and aldermen report to the Board</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>regarding attempts to lobby them by persons they do not recognize as already-registered lobbyists, and the Board then follows up with these person(s) by requiring lobbyist registration or a sufficient explanation as to why registration is not required.</p> <p>In fact, the very issue of who is a lobbyist, and who must register as a lobbyist, in any given jurisdiction, is the basis for a specialized body of professional legal practice. Attorneys (both in-house and in private practice) are commonly retained to ensure that their clients register in each jurisdiction in which they might engage in activity that could be defined as "lobbying" by that jurisdiction and then registering as duly required. See Trevor Potter and Matthew Sanderson, eds., <i>Political Activity, Lobbying and Gift Rules Guide</i>, 3d Edition 2015-2016; David Poisson, ed., <i>Lobbying, PACs and Campaign Finance, 50 State Handbook</i> (2015 Edition); <a href="http://stateandfed.com/">http://stateandfed.com/</a> (the website of State &amp; Federal Communications, Inc., a leading provider of such services).</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>Nonetheless, the Board recognizes that capturing <i>all</i> lobbying activity in City government is a continuing challenge. The Report, however, has given us no new suggestions that might aid us in identifying unregistered lobbyists.</p> <p>4) Finally, as to the suggestion that lobbyist registration statements include, under the signature line, a reference to the penalty for providing false statements, we note that current law (§2-156-230(d)) already provides that registration statements "shall be accompanied by a written statement certifying that all information contained therein is true and correct." Moreover, under §2-156-465(b)(7), lobbyists who violate §230(d) are subject to fines between \$500 and \$2,000 for each offense. Nonetheless, the Board appreciates this suggestion, and will seek the counsel of the Law Department with respect to adding an explicit reference to the false statements provisions in the Municipal Code (§1-21-010 <i>et seq.</i>). Lobbyists would appear to be subject to this</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>false claims ordinance, given that §2-156-495 of the Governmental Ethics Ordinance provides that "nothing in this chapter is intended to repeal or is to be construed as repealing in any way the provisions of any other law or ordinance." The Board has made no representations otherwise.</p> <p>One last observation on this particular recommendation: it would have been better timed if it had been made earlier—perhaps, in the Spring or Summer of 2015—rather in mid-December, just before the 2016 lobbyist registrations forms are due, thus making its implementation unavailable for the January 20, 2016 registration deadline. Nonetheless, we commit to performing our due diligence and making any appropriate changes to lobbyists' forms, for the 2017 registration year.</p>		





## OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
2. OIG recommends that BOE stop accepting lobbyist disclosures via hardcopy submission. If BOE continues to accept hardcopy disclosures, OIG recommends that BOE address the recordkeeping issues identified to better fulfill its obligations under MCC § 2-156, Article IV. In particular, BOE should document criteria used to assess the completeness of a registration, formalize the reliance on postmarks as evidence of filing dates in its Rules and Regulations, and treat hardcopy submission envelopes as public records and maintain them in accordance with its records retention schedule.	Agree	The Board knows and appreciates that other jurisdictions (including the State of Illinois) mandate electronic lobbyist registration and no longer accept paper filings, and appreciates that the audit found three (3) date-stamp errors made for the 2014 lobbyist registration year. The Board commits to requiring lobbyists to register, amend registrations, and file quarterly activity reports and termination statements on-line through the ELF ( <u>E</u> lectronic <u>L</u> obbying <u>F</u> iling) system. There are lobbyists for whom this will cause consternation or frustration. However, upon the OIG's recommendation, the Board concurs that the time has come to require on-line lobbyist filings. We appreciate this recommendation and will move to all-electronic filing.	By January 2017.	Board of Ethics.



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
<p>3. OIG recommends that BOE levy the full amount of fines allowable by the Ethics Ordinance against late filers beginning with the first day after the annual registration deadline. If BOE chooses to impose fines in a way that differs from the current language of the Ethics Ordinance, OIG recommends that BOE work with City Council to ensure that its calculation of fines aligns with the City ordinance and its own rules. OIG also recommends that BOE formalize in its Rules and Regulations its guidelines for what constitutes a "suitable explanation" for late filing.</p>	<p>Disagree with OIG's recommendation and finding as to late-registering lobbyists' penalties.</p> <p>Agree with OIG's recommendation to make more apparent what constitutes a "suitable justification" for late filing.</p>	<p>The Board has considered the OIG's reading of the Ordinance, but respectfully rejects it, for the reasons that follow. The Board levies the full amount of fines allowable under the relevant provisions of Ordinance.</p> <p>1. As an initial matter, the Board points out that, under the Municipal Code of Chicago, the Board of Ethics itself authoritatively interprets and administers the Governmental Ethics Ordinance, chapter 2-156 of the City's Municipal Code. For the 28 years of the Board's existence, others, including lobbyists, City employees, officials, contractors, their attorneys, and other City departments, such as the Law Department, Mayor's Office, City Council, and even the OIG itself, have proffered their own interpretations of various provisions of the Ordinance. The Board has always considered these proffers, which have occurred in the context of requests for advisory opinions, or in the course of defenses asserted by investigative subjects during the Board's investigative and enforcement</p>	<p>Per # 14, below, the Board will clarify in its Rules and Regulations what constitutes a valid justification for lateness, by January 2017.</p>	<p>Board of Ethics.</p>



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>process. (The Board's investigative authority expired in 2013, but now, however, the Board sees proffered interpretations of the Ordinance in its current role as adjudicator of ethics investigations).</p> <p>2. Thus, we note that the OIG could simply have requested that the Board issue an advisory opinion in which the OIG's interpretation of the Ordinance provisions that cover assessing fees against late-registering lobbyists would have been considered.</p> <p>3. The OIG's Report states that it:</p> <p>"found that BOE applies a grace period for late registration that does not exist in the Ethics Ordinance" ... a sample of lobbyists required to file annual registrations by January 20, 2014 revealed 45 lobbyists against whom BOE could have imposed fines totaling \$197,000 but instead imposed against only two ... Overall in 2014, BOE fined a total of ten late-registering lobbyists ... a total of \$58,000."</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

Joseph M. Ferguson  
*Inspector General*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p><b>The OIG's figure is incorrect.</b></p> <p>4. It is a basic tenet of administrative law that courts grant significant deference to administrative agencies' interpretations of the statutes they administer, largely because these agencies deal with these statutes on a daily basis and have developed sophistication about them (<i>mutatis mutandis</i>: the Board is an administrative agency, as is the OIG). <i>Chevron, U.S.A., Inc. v. NRDC</i>, 467 U.S. 837 (U.S. Supreme Court, 1984).</p> <p>5. The relevant provisions of the Ordinance provide [emphasis in red added]:</p> <p><b><u>§2-156-230, Information Required of [Lobbyist] Registrants:</u> "No later than January 20<sup>th</sup> of each year, or within five business days of engaging in any activity which requires such person to register, every person required to register shall file with the board of ethics a certified written</b></p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>statement on a form prescribed by the board ..."</p> <p><b>§2-156-245. Failure to Register:</b> "When the board of ethics determines that any person has failed to register as required in this Article, the board of ethics shall notify such person in a manner prescribed by the board of his failure to register. Such person shall be subject to the penalty or penalties, as applicable, provided in Article VII of this Chapter. The board of ethics shall suspend the registration of and not accept a lobbyist registration statement from any person who owes a fine pursuant to this chapter until the fine has been paid in full."</p> <p><b>§2-156-270. Failure to file reports.</b> "If a registrant fails to file a report as required herein, the board of ethics shall, within 15 days of the due date, notify the registrant in a manner prescribed by the board, of his failure to file by the required date. The registrant shall thereafter file his report within 10 days of the issuance of the notice. Any registrant who fails to file within the 10 days is</p>		



**OFFICE OF INSPECTOR GENERAL**

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p><b>subject to suspension of his lobbyist registration and the penalty or penalties, as applicable, provided in Article VII of this chapter. Failure to file within the 10 days shall constitute a violation of this chapter.</b></p> <p><b>Any registrant who is required to file a report hereunder may effect one 30-day extension of time for filing the report by filing with the board of ethics, not less than 10 days before the date on which the statement is due, a declaration of his intention to defer the filing of the report. The filing of such declaration shall suspend application of the penalty provisions contained herein for the duration of the extension. Failure to file by the extended date shall constitute a violation of this chapter and shall subject the registrant to suspension of his lobbyist registration and the penalty or penalties, as applicable, provided in Article VII of this chapter.</b></p> <p><b>The board of ethics shall not accept a lobbyist</b></p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p><b>registration statement from any person who owes a fine pursuant to this section until the fine has been paid in full. The registration of any person who fails to file a timely report for three or more reporting periods may be suspended by the board for a 1 year period.</b></p> <p><b><u>§2-156-465(b)(3), Sanctions, Failure to register of file reports by lobbyists:</u> "Any lobbyist who violates section 2-156-245 or section 2-156-270 shall be fined \$1,000 for each such violation. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply ... The Board shall also make public, in a manner the board deems appropriate, the names of lobbyists who violate Section 2-156-245 or 2-156-270."</b></p> <p>The Board notes here that this last sentence, requiring the Board to make public names of late-filing lobbyists, was added to the Ordinance effective July 30, 2015. The OIG's Report claims</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>that this was done at the OIG's recommendation, made to Board staff in a June 2015 meeting. However, the Board wishes to correct the record: the Board had been pushing for such an amendment since Spring 2012, during the work of the Mayor's Ethics Reform Task Force, and pushed it again once the Ordinance was amended to require the Board to makes public the names of late-training and late-filing City personnel, but not of late lobbyists. Regardless of its origin, however, this amendment provides greater transparency: the public and the regulated community benefit by knowing the names of lobbyists who have violated the lobbying laws for filing or training late.</p> <p><b><u>§2-156-505, Training and filing violations – Executive director's authority.</u></b>  <b>Upon determining that a person has violated Section 2-156-145, 2-156-146, 2-156-190, 2-156-245, or 2-156-270, the executive director of the board is authorized to impose upon such person an appropriate fine as provided in Section 2-156-</b></p>		





# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

Joseph M. Ferguson

*Inspector General*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p><b>465. The executive director is authorized to impose such fine starting on the seventh day after the executive director notified the person of the violation. The person may contest the imposition of such fine as provided by rule... [Emphasis added].</b></p> <p>6. As the Board has administered and interpreted <i>the plain language</i> of these provisions, it notifies registered lobbyists in writing in December that their annual re-registrations are due by close of business on January 20<sup>th</sup>, and that the fines for late filing are \$1,000 per day if they are determined to be in violation of the law.</p> <p>7. §2-156-245 of the Ordinance is clear that, when the Board determines that a person has failed to register as required, the Board shall notify the person of his failure to register—<b>not</b> notify the person that he has already violated the Ordinance. That is because there has not yet been, and there cannot have yet been, a Board determination that</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>the person has already violated the Ordinance. This is a critical point that the OIG's interpretation misses. §2-156-505 is clear that, "upon <b>determining</b> that a person has violated" the law—and not before that—the Board's Executive Director "is <b>authorized to impose</b>" an "appropriate fine," and further that "the Executive Director is <b>authorized to impose such fine starting on the seventh day after the executive director notified the person of the violation.</b>"</p> <p>8. Thus, <b>notifications of lateness or failure to file by January 20<sup>th</sup>—not notifications of a violation—are sent (via email or via certified mail) on January 21<sup>st</sup></b>, or (as provided in the Board's Rules &amp; Regulations) within three days thereafter. These notices explain that the filers are late, and that the Board (technically, under the Ordinance, the Executive Director), has, by that lateness, found "probable cause" to conclude that the lobbyist is in violation of the Ordinance by being late. This is not a determination of a violation.</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>9. It is also a basic tenet of statutory construction that courts (or administrative agencies, like the Board of Ethics) will construe legislation to ascertain and give effect to the intent of the legislature, bearing in mind that the best evidence of this intent is the plain language of a statute—and will not impose interpretations contrary to the plain language. <i>People of State of Illinois v. Ettinger</i>, 2013 IL 114121 (Illinois Supreme Court, 2013); <i>People v. Lloyd</i>, 2013 IL 113510 (Illinois Supreme Court, 2013); <i>People v. McChriston</i>, 2014 IL 115310 (Illinois Supreme Court, 2014).</p> <p>10. The Ordinance nowhere states that a lobbyist is automatically in violation of the Ordinance at 12:00:00 am on January 21<sup>st</sup>. Nor does it provide that fines automatically begin running (or “tolling,” in the language of the OIG’s Report) at 12:00:00 am on January 21<sup>st</sup>. Instead, §2-156-245 provides that a late-filing lobbyist “<b>shall be subject to the penalty ... provided in Article VII.</b>” The words</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>"subject to" imply discretion, not an automatic fine. Lobbyists may have a valid justification for lateness (the Board accepts illness of the lobbyist or a family member as a valid justification). If a lobbyist is able to produce a credible justification, then the Executive Director may find him or her not in violation of the Ordinance. This is why Article VII, specifically, §2-156-505, employs the language "upon determining that a person has violated the law."</p> <p>11. Were the intention of these provisions that both the violation and the fine begin at 12:00:00 am on January 21<sup>st</sup> (the OIG's argument), then why use words like "upon determining," "subject to," "provide notice of the failure to file?" Why provide, as the Ordinance does, in §2-156-505, that the "Executive Director is authorized to impose such fine starting on the seventh day after the Executive Director notified the person of the violation?" The OIG argues that "the plain meaning of 'impose' ... [is] that the fine cannot be demanded</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>for payment until the lobbyists is allowed the seven-day response period as part of due process." The Board disagrees, as this reading is inconsistent with the scheme set out in the Ordinance for the assessment, or imposition, of fines against late-registering lobbyists. The word "impose" is <b>not</b> synonymous with "demand for payment" for a debt that is already seven days' old. Rather, "impose" means "to levy or exact as by authority; to lay as a burden, tax, duty or charge." BLACK'S LAW DICTIONARY, 5<sup>th</sup> Ed. If the drafters meant that the Executive Director could begin "tolling" or exacting the penalty of \$1,000 per day on January 21<sup>st</sup>, but not begin to "demand for payment" until seven days after making the determination that a person violated the Ordinance, they would have used different words. What would be the rationale for waiting seven days before actually allowing the Executive Director to "demand payment" of a fine that, as the OIG argues, began running seven days before? Why wait seven days? Why not on the first day? The OIG's interpretation is inconsistent with</p>		



**OFFICE OF INSPECTOR GENERAL**

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>due process, and with the plain language of the statute. The law should not be construed to lead to absurd results: <i>Lex nil frustra facit</i>.</p> <p>12. The Board is sensitive to the City's financial situation. However, we will not misread and misapply the law that we are charged with interpreting and administering in order to extract more revenue from lobbyists (nor from City employees or officials who file their annual Ethics forms or fail to complete their annual ethics training by the relevant deadline, as Article VII applies to them as well).</p> <p>13. Rather, we conclude that the structure laid out in these Ordinance provisions is that the law requires that lobbyists who are late in registering receive notice of their lateness, and receive a notice that the Executive Director has found probable cause to conclude that they are in violation, but that they then have a statutory period to refute that probable cause finding. If they</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>are unable to refute it, the Board will then determine them to be in violation of the law, but the law provides that the fines can be imposed or begin no earlier than the seventh day after the date of the notice of the probable cause finding. Accordingly, they have been allowed to contest the imposition of that fine pursuant to the procedures laid forth in Rule 8(3) through 8(7). There is, by law, no violation until the Executive Director acts as authorized pursuant to §2-156-505.</p> <p>For these reasons, the Board respectfully rejects the interpretation of the Governmental Ethics Ordinance as proffered in its Audit Report.</p> <p>14. The Board will, however, consider suggesting an amendment to the Ordinance that would have the effect of beginning the levying, the imposition, of fines at 12:00:00 on January 20 (and possibly other relevant dates, such as January 1 and June 1). However, enacting such an amendment to the law would be the decision of the City Council.</p>		



# OFFICE OF INSPECTOR GENERAL

*City of Chicago*

740 N. Sedgwick Street, Suite 200

Chicago, Illinois 60654

Telephone: (773) 478-7799

Fax: (773) 478-3949

Joseph M. Ferguson

*Inspector General*

OIG Recommendation	Agree/Disagree	Department's Proposed Action	Implementation Timeframe	Party Responsible
		<p>15. Moreover, the Board <i>will</i> make its rules clearer as to what constitutes a suitable justification for lateness. For example, in Mississippi, at the discretion of the Mississippi Secretary of State, a fine for late lobbyist filing may be waived, in whole or in part, if "unforeseeable mitigating circumstances, such as the health of the lobbyist," interfered with the timely filing of a required report. See Miss. Code Ann. §5-8-17.</p>		