

BOARD OF ETHICS

Open Session Minutes

FEBRUARY 8, 2021, 3:07 P.M.

740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

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

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard Superfine, Legal Counsel
Ana Collazo, Attorney/Investigator
Edward Primer, Program Director
Pully Casillas, Staff Assistant

BOARD MEMBERS ABSENT

Dr. Daisy S. Lezama

GUESTS ATTENDING

Heather Cherone, WTTW
Alex Nitkin, The Daily Line
Claudia Morrell, WBEZ
Nancy Andrade, former Board member
Brielle Berndtson, Field Museum legal intern
Timothy McNicholas, Channel Two

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

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Dr. Daisy S. Lezama and Hon. Barbara McDonald, absent) to approve the open session minutes of the Board's meeting of January 11, 2021.

II. CHAIR'S REPORT

On behalf of the Board, the Chair thanked former Board member Nancy Andrade for her service on the Board and congratulated her on her appointment and impending City Council confirmation as Chairperson and Commission member of the City's Commission on Human Relations, which enforces the City's Human Rights and Fair Housing Ordinances.

The Chair then reported that the Board is facing several lawsuits, and asked the Executive Director to briefly explain them, which he did, and the Chair asked the Executive Director to explain the Board's collaboration with officials from the Chicago Public Schools ("CPS") in assisting them with implementing a lobbying policy for the district and enabling CPS's lobbyists to register and report through the Board's "ELF" (Electronic Lobbyist Filing) system.

III. MEMBERS' REPORT

None

IV. EXECUTIVE DIRECTOR'S REPORT

The Executive Director also thanked Nancy Andrade for her years of service on the Board, on behalf of the staff, and said that our office looks forward to continuing to work with her and our colleagues at CCHR, whose offices are one floor beneath ours.

At this time (3:19) Nancy Andrade left the Board meeting.

A. Amendments to the Ordinance

1. The current thinking is that a package of amendments will be submitted in the next month, to take effect on January 1, 2022. We will have more regarding what the draft provides in Executive Session.
2. There will be more discussion in closed session of potential actions relating to the procedures covering chapter 2-156 (Governmental Ethics Ordinance) investigations completed by the Office of Inspector General ("OIG").

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>

B. Education

On-line Training

For appointed officials

To date, all but 41 appointed officials have completed the annual training for appointed officials. We are not going to enforce deadlines for this year's training, due to the Covid-19 pandemic. We are grateful for the assistance of the Mayor's Office of Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 7,980 employees and seven (7) aldermen have completed it to date (putting us at about 25% compliance City-wide), and 207 employees and officials are currently in progress. We extended the deadline to July 1, 2021.

For lobbyists

To date, 492 lobbyists have completed the all-new annual on-line training. Lobbyists will have until May 3, 2021 to complete it.

Classes and other presentations

We cancelled all in-person classes from March 2020 on. Of course, given the course of the pandemic, we are unsure when we will be able to resume but are working to come up with a plan to move to virtual

classes. We have extended all training deadlines accordingly. All Board classes and educational programs cover sexual harassment.

On March 8, we will again train the entire staff of the Civilian Office of Police Accountability (“COPA”) on the Ethics Ordinance, at the request of its Administrator. This will be conducted via Zoom.

During the month of March, the Department of Planning & Development will host a series of sessions for Commissioners and Service Providers of the City’s various SSAs (Special Service Areas). We submitted materials and will be available via Zoom to answer questions these appointed officials and vendors have.

C. Sister Agency Ethics Officers/Lobbying Assistance to CPS

The next meeting of the ethics officers from the other local governmental agencies will be in March: these are our colleagues from the Cook County Board of Ethics, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, the Cook County Assessor’s Office, Cook County Inspector General’s Office (who are responsible for the MWAA) and Chicago Housing Authority).

We continue to work with our colleagues from the CPS to assist them in implementing a lobbying policy. We are modifying our ELF program to include lobbyists registered with the CPS and have offered our assistance to them in drafting their lobbying policy.

D. Chicago Casino, the Board’s Work per the Illinois Gambling Act

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

Board staff has been working closely with the Law Department, Mayor’s Office, and the City’s outside counsel (Taft, Stettinius and Hollister) to ensure that City officials and employees are informed of these reporting (and eventually, substantive ethics) requirements and prohibitions. There have been multiple briefings with City Council members and their senior staff. Later briefings with City departments and boards and commissions that explain these laws and requirements will occur in 2021.

E. Advisory Opinions

Since the Board’s last meeting on January 11, we have issued 289 informal advisory opinions. The leading categories for informal opinions were, in descending order: Gifts; Lobbying; City Property; Statements of Financial Interests; Post-employment; Campaign Financing; and City Property.

The leading City departments from which requesters came in this period were, in descending order: City Council; Mayor’s Office; Police Department/Civilian Office of Police Accountability (COPA); Department of Public Health; Chicago Public Library; and the Office of the Treasurer.

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.

I note also that the office continues to see a marked increase in citizen inquiries. Some of these result in complaints, which we then refer to the OIG. We do not have authority to issue advisory opinions to members of the public unless they are personally involved in the specific situation about which they inquire.

F. 2021 Statements of Financial Interests

In January we sent spreadsheets to each City department, aldermanic office, and City Council committee, and the Mayor's Office of Intergovernmental Affairs (which keeps track of City appointed officials) with lists of 2020 filers, asking them to update these lists. Then, on or around March 1, as required by law, we will have our EFIS system send out notices of filing to all required filers. We anticipate about 3,850 filers for 2021.

G. Personnel Rules Revisions

In conjunction with the Mayor's Office, Departments of Human Resources, Law, Buildings, Business Affairs and Consumer Protection, and others, we have been working on updating the City's 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 address proper restrictions on recommending vendors or tradespeople to persons who are subject to inspections, permit reviews, etc.

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

Every formal Board opinion issued since 1986 is posted on the Board's website (more than 910), redacted in accordance with the Ordinance's confidentiality provisions. 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. Only a handful of other ethics agencies have comparable research tools. We are unaware of jurisdictions that make their *informal* opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement.

I. 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.

J. 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 has undertaken since July 2013 where no OIG investigation was necessary.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There have been, to date, 126 such matters (including one (1) 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 Governmental Ethics Ordinance. Since July 1, 2013, alone, there have been 54 such matters.

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

There is one completed OIG investigation awaiting adjudication, and it is on the agenda for today for the Board's consideration of making a probable cause finding. It involves a City employee who owned a company that subcontracted on contracts of a City sister agency, to be paid with funds belonging to the City. It is the twelfth completed investigation submitted by the OIG to the Board since July 1, 2013.

We post on our website and continually update an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the OIG 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 OIG presents the Board with a completed ethics investigation in which the OIG 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 OIG's report, recommendations, and the entirety of the evidence submitted in its completed ethics investigation, including a review to ensure that the OIG conformed with the requirement that it completed ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that ethics investigations were commenced within five (5) years of the last alleged act of misconduct.

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

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

This process may seem cumbersome. However, it was added to the Ordinance and became effective on July 1, 2013, based on specific recommendations of former Mayor Emanuel's Ethics Reform Task Force

in Part II of its 2012 Report – the primary purposes being (i): to guarantee due process for all those investigated by the OIG (or former LIG); (ii) to ensure that **only** the Board of Ethics may make determinations as to whether a person investigated by the OIG or LIG violated the Ordinance, given the Board’s extensive jurisprudence and unique expertise in ethics matters; and (iii) to balance due process for those investigated by the OIG with an accurate and precise adjudication by the Board of Ethics and the public’s right to know of ethics violations.

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

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

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

L. Disclosures of Past Violations

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that he or she may self-report to the OIG or, if he or she fails to do so within two (2) weeks, the Board must make that report.

In 11 matters, the Board has determined that minor violations occurred, and Board sent confidential letters of admonition, as required by Ordinance. These letters are posted on the Board’s website, with confidential information redacted out. See https://www.chicago.gov/city/en/depts/ethics/supp_info/ao - apptoffi1.html

M. Litigation

Lee v. City of Chicago. On June 26, the City was served with a lawsuit, filed in Cook County Circuit Court, Chancery Division, by a former City employee of the Civilian Office of Police Accountability (COPA). The case is *Jason W. Lee v. City of Chicago*, 2020 CH 04524. The plaintiff left City employment on February 28, 2020 and works as an attorney for the Policemen’s Benevolent and Protective Association (“PBPA”). His suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague, and that the City is improperly attempting to regulate the practice of law by Illinois attorneys. It asked for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. After the matter was briefed by both sides, on July 31, the Honorable Anna Demacopoulos denied the plaintiff’s request for a temporary restraining order. The plaintiff was granted leave to file an amended complaint, and filed one, adding an as-applied constitutional challenge. The City has filed its brief to dismiss the entire matter, the plaintiff filed his responsive brief, and the City’s sur-reply brief was filed as well. We await oral argument on the City’s motion, currently scheduled for February 25.

In addition, several members of the PBPA filed grievances under their collective bargaining agreement, alleging that their right “to counsel of their choice” was violated by COPA. It is scheduled for arbitration on February 11. I may testify in that arbitration.

Johnson v. City of Chicago. On October 14, an elected member of the Library Board of Wilmette (a “unit of local government” in Illinois), sued the City in U.S. District Court. The case is *Dan Johnson v. City of*

Chicago, No. 1:20-cv-06119. The plaintiff asks the court for a preliminary injunction preventing the City from enforcing the “cross-lobbying” ban, §2-156-309, on the basis that it violates his rights of free speech and association under the First Amendment of the U.S. Constitution. The City has moved to dismiss the suit on the basis that the plaintiff has no standing and has filed its brief in response to the motion for a preliminary injunction. The court has yet to rule on that motion. The case is assigned to Judge John Robert Blakey and Magistrate Judge Sheila Finnegan.

Brookins v. Board of Ethics, et al. This matter has been assigned to the Honorable David Atkins in the Chancery Division of Cook County Circuit Court. The Board’s and my attorneys are working on the matter.

N. Lobbyists: Re-registration deadline and Q4 Reports

To date for 2021, there are 785 registered lobbyists. We have collected \$332,000 in lobbying registration fees. Q4 activity reports and 2021 re-registrations/termination were due by midnight, Wednesday, January 20. The deadline for lobbyists to complete registration filing and fee payment without accruing a daily \$1,000 fine was 11:59 p.m. February 3.

There were 16 lobbyists who failed to properly re-register or terminate their registrations (4 of them have yet to re-register or terminate thus their fines are ongoing at \$1,000 per day), and 22 who have yet to file their activity reports.

As 16 were late in re-registering or terminating, they were found in violation of the law and their names and fines were published. All were fined or are accruing fines.

Activity reports are due by 11:59 p.m. February 8, 2021. Lobbyists who file after that date will receive a due process letter giving them until February 24, 2021 to file in order not to accrue a fine.

O. Freedom of Information Act

Since the last Board meeting, the Board has received one (1) new request for records. It was for all materials relevant to an enforcement file and certain Board public records; we responded by attaching links to public records and denied the request as to confidential records.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

None

VII. NEW BUSINESS

None.

At 3:23 p.m., the Board VOTED 4-0 (Dr. Daisy S. Lezama and Hon. Barbara McDonald, absent) to adjourn into Executive Session under: (i) 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act; (ii) 5 ILCS 120/2(c)(4) to hear and discuss evidence or testimony in closed hearing as specifically authorized pursuant to Governmental Ethics Ordinance Sections 2-156-385 and -392, and the Board's Rules and Regulations, as amended, effective January 5, 2017, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

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

At 4:52 the Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The members of the public were invited to rejoin the Open Session.

MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in Executive Session, VOTING 5-0 (Dr. Daisy S. Lezama, absent) in Open Session, to approve the Executive Session minutes of the January 11, 2021 meeting.

II. CASEWORK

A. Consideration of Parties' Responses to Board's Finding of Probable Cause of Violations of §2-156-445 of the Governmental Ethics Ordinance

1. Case Nos. 20026.CF.1, Campaign Financing

The Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to provide emailed materials to the respondents' representative and defer further consideration of this matter until the next scheduled Board meeting, March 15, 2021.

B. Consideration of Probable Cause Finding based upon a Completed Report from the Office of Inspector General Pursuant to §2-156-385 of the Governmental Ethics Ordinance

2. Case No. 21006.IG, Financial Interest in City Business

Staff reported that the OIG referred this case to the Board on January 22, 2021, and requested the Board issue a finding of probable cause against a City employee for having a prohibited interest in City business. The case stems from a subcontract that a company the employee owned entered into with another company on this other company's prime contract with the Public Building Commission. Typically, such contracts are not paid with funds belonging to or administered by the

City or approved by City ordinance, thus usually such contracts or subcontracts with sister agencies are not prohibited by law. However, this prime and subcontract *were* paid with funds belonging to or administered by the City. After reviewing and thoroughly discussing the OIG's evidence, the Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to find there was probable cause to conclude the employee violated that provision, and, because the record showed important mitigating factors, to agree to end the matter for the minimum fine of \$500 (given that the violation occurred in 2017, when the minimum fine for such a violation was \$500). The Board then directed staff to notify the subject of the right to participate in a subject meeting or enter into an agreement to pay the minimum fine.

C. Status Reports, Consideration of Further Board Action

3. Case No. 20036.C, Fiduciary Duty

The Chair reported that the Board and Executive Director have each retained counsel in this case, and that the Board looks forward to having its carefully reasoned opinions and determinations in this matter heard by the court.

D. Report on Dismissed and Referred Complaint

4. Case No. 21001.C, No Jurisdiction

The Chair reported that the Board heard staff's report on a complaint alleging falsification of various documents, which staff received and immediately referred to the OIG for action it deems appropriate.

At 4:58 p.m., the Board VOTED 6-0 (Dr. Daisy S. Lezama, absent) to adjourn the meeting.