

BOARD OF ETHICS

Open Session Minutes

MARCH 15, 2021, 3:02 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
Pally Casillas, Staff Assistant

BOARD MEMBERS ABSENT

Dr. Daisy S. Lezama

GUESTS ATTENDING

Heather Cherone, WTTW

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

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of February 8, 2021.

II. CHAIR'S REPORT

The Chair asked the Executive Director to briefly summarize the status of the three lawsuits and one arbitration involving the Board and its Executive Director. The Executive Director commented briefly, and referred everyone to his Report, which contains a more detailed status report.

III. MEMBERS' REPORT

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Amendments to the Ordinance

1. The current thinking is that a package of amendments regarding non-profit lobbying will be submitted in the next few months. We will have more on this in Executive Session.
2. There will be more discussion in Executive Session of progress made relating to the procedures

covering chapter 2-156 (Governmental Ethics Ordinance) investigations conducted and completed by the Office of Inspector General (“IG”).

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, 11,480 employees and seven (7) aldermen have completed the program to date (putting us at about 34.4% compliance City-wide). 141 employees and officials are currently in progress. We extended the deadline to July 1, 2021.

For lobbyists

To date, 630 lobbyists have completed the annual on-line training, putting us at 78% compliance. Lobbyists have until May 1, 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 trained the entire staff of the Civilian Office of Police Accountability (“COPA”) on the Ethics Ordinance, at the request of its Administrator. The class was conducted via Zoom.

This month, the Department of Planning & Development is hosting 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.

On March 23, we will participate in a seminar for the leadership of the City’s Department of Aviation, at the request of the Commissioner.

C. Sister Agency Ethics Officers

The next meeting of the ethics officers from the other local governmental agencies is March 22: 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).

D. Lobbying Assistance to CPS

We continue to work with our colleagues from the Chicago Public Schools to assist them in implementing a lobbying policy. We have modified our ELF program to include lobbyists registered with the CPS and have offered our assistance to them in drafting their lobbying policy. Once that policy becomes effective, CPS's lobbyists can begin registering with our office, and the public will know who they are and the information they disclose.

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

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

F. Advisory Opinions

Since the Board's last meeting on February 8, we have issued 366 informal advisory opinions. The leading categories for informal opinions were, in descending order: Lobbying; Statements of Financial Interests; Conflicts of Interests; City Property; Gifts; Campaign Financing; and Post-employment.

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

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 Office of Inspector General. 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.

G. 2021 Statements of Financial Interests

On February 28, as required by law, our EFIS system sent notices to 3,603 City employees and officials regarding their requirement to file Statements of Financial Interests by May 3. To date, approximately 1,325 have filed, putting us at ~ 36.5% compliance.

H. 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 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.

I. 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.

J. 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.

K. 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.

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.

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

There is one completed IG investigations awaiting adjudication, and it is on the agenda for today for the Board's consideration of executing an agreement with a City employee who owned a company that subcontracted on contracts of a City sister agency, the Public Building Commission, to be paid with funds belonging to the City. It is the twelfth completed investigation submitted by the IG to the Board since July 1, 2013. This is the sole case from the IG currently pending in our office.

We post on our website and continually update an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (12 since July 1, 2013) and the former Office of the Legislative Inspector General ("LIG"), since January 1, 2012, and the status of all 50 petitions to commence investigations presented to the Board by the LIG. We update it as appropriate, consistent with the Ordinance's confidentiality provisions. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/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 completed ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that ethics investigations were commenced within five (5) years of the last alleged act of misconduct.

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

If the subject is unable to rebut the Board's *prima facie* probable cause finding, the Board may enter into a settlement agreement – all settlement agreements are made public – or the Board or subject may decide to proceed to a merit 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 IG (or former LIG); (ii) to ensure that **only** the Board of Ethics could make determinations as to whether a person investigated by the IG violated the Ordinance, given the Board's extensive jurisprudence and unique expertise in ethics matters; and (iii) to balance due process for those investigated by the IG with an accurate and precise adjudication by the Board of Ethics and the public's right to know of ethics violations.

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

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

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

M. Disclosures of Past Violations

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

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

N. Litigation

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

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 April 11.

Johnson v. City of Chicago. On October 14, 2020, 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 has asked 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 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 case is assigned to the Honorable Judge John Robert Blakey and Magistrate Judge Sheila Finnegan. The motion is still pending.

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. There will be more on this matter in closed session.

O. Lobbyists: Re-registration deadline and Q4 Reports

To date for 2021, there are 808 registered lobbyists. We have collected \$352,000 in lobbying registration fees. Q4 activity reports and 2021 re-registrations/termination were due by midnight, Wednesday, January 20. Activity reports were due by 11:59 p.m. February 8, 2021, and, by law, lobbyists who failed to file by February 26 were subject to fines of \$1,000 per day. One (1) Lobbyist was found in violation for failing to file his activity report by this deadline and was fined \$1,000 per day.

P. Freedom of Information Act

Since the last Board meeting, the Board has received 28 new requests for records.

The first was for all FOIA requests and responses from 1-1-17 to 12-21-20; after negotiating with the requestor, limiting the request, we located records and sent them to the requestor.

The second was for the identity of a ward ethics officer; we provided the link to that list and explained the law about wards appointing ethics officers after one had left that position.

The third was for a departmental ethical firewall between a City employee and an alderman; we advised that we were the wrong department to contact and that we had no responsive records.

The fourth was for documents pertaining to real estate in the City; we responded that we were the wrong department.

The fifth was for FOIA forms; we sent links for our suggested FOIA request forms by email.

The sixth asked for the identity of all lobbyists who have lobbied for a named entity since 2002; there were none and we advised that we had no responsive records.

The seventh was for a police officer’s disciplinary records; we advised the requestor that we had no records, and we were the wrong department.

The eighth was slightly changed and from the same requestor, answered the same.

The ninth was for training records for a ward employee; we advised there were no responsive records.

The tenth was a literal repeat of the fourth, above.

The eleventh was similar to the eighth, above, for a different police officer.

The twelfth was for documents about a police sergeant impersonating a police officer; we advised we had no records and were the wrong department to contact.

The thirteenth was for disciplinary files for a police officer; we responded we had no records and were the wrong department to contact.

The fourteenth was for test results regarding a police graduating class in 2018; we advised we were the wrong department and had no records.

The fifteenth was for records as to what 3 police officers saw when at the academy; we advised we were the wrong department and had no records.

The sixteenth was for work attendance time sheets for 5 police personnel; we advised we were the wrong department and had no records.

The seventeenth was for current photos of 5 police officers; we advised that we were the wrong department and had no records.

The eighteenth was for all records of a police officer; we advise we were the wrong department and had no records.

The nineteenth was for attendance records and their alleged falsification by a police officer; we advised we were the wrong department and had no records.

The twentieth was for all records of discipline against 3 police officers; we advised that we were the wrong department and had no records.

The twenty-first was for numerous documents, mostly criminal records; using a template from the Law Department we advised the requestor that we were the wrong department, did not have records and asked him to clarify his request.

The twenty-second was similar to the twenty-first and from the same requestor; we responded using a similar template from the Law Department.

The twenty-third was the same as the fourth, above; we gave the same response.

The twenty-fourth was for emails to/from the Board containing certain names; we advised that we had no responsive records.

The twenty-fifth was for records on training for ward level ethics officers; we advised that we had no responsive records.

The twenty-sixth was for the Board's retention schedule and FOIA logs for 2020 and 2021; staff assembled the documents and responded.

The twenty-seventh was for the date of receipt and description of request of FOIA requests to the Board since 2010; staff assembled the documents and responded.

The twenty-eighth was for among other things communications with a different public sector agency; staff requested input from the Law Department and responded with documents.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

None

VII. NEW BUSINESS

None

At 3:08 p.m., the Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to adjourn into Executive Session under: (i) 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act; (ii) 5 ILCS 120/2(c)(4) to hear and discuss evidence or testimony in closed hearing as specifically authorized pursuant to Governmental Ethics Ordinance Sections 2-156-385 and -392, and the Board's Rules and Regulations, as amended, effective January 5, 2017, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

The member of the public was asked to leave the Executive Session of the meeting and advised she would be invited into the reconvened Open Session of the meeting.

At 4:30 the Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The member of the public was 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 February 8, 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 re-issue the October 22, 2020 letter to a Ward Regular Democratic Organization in which the Board summarized its finding of probable cause of a campaign financing contribution violation by that organization, and that organization's rights to contest that finding.

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

The Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to approve an agreement resolving this matter by instituting a fine against a City employee for a violation of the City's Interest in City Business provision, §2-156-110(a).

Before adjournment, the Chair and staff briefly summarized the status of current litigation involving the Board and the Board's meeting with the Office of Inspector General and the Department of Law.

At 4:38 p.m., the Board VOTED 5-0 (Dr. Daisy S. Lezama, absent) to adjourn the meeting.