

## Executive Director's Report June 12, 2023

### Matters Relating to the New Administration and City Council

In the next few months, we will again present to the Mayor and City Council our recommendations for amendments to the Governmental Ethics Ordinance, pursuant to our responsibility under §2-156-380(f) of the Governmental Ethics Ordinance. Among other things, we will consider clarifying various aspects of the Ordinance's regulation of City Council independent contractors, in light of a media story earlier this week. We are also following the latest proposal to make the position of Alderperson full-time, and restrict or prohibit City Council members' secondary employment or outside business ownership. We have researched how our peer cities handle this issue (New York City, Philadelphia, Washington DC, Atlanta, San Diego, Los Angeles, San Francisco, and Seattle).

### 2023 Statements of Financial Interests

On February 28/March 1, as required by law, we notified 3,925 City employees and officials required to file 2023 Statements of Financial Interests ("FIS forms") of their requirement to file before Tuesday, May 2, with the link to file electronically. We were in regular contact with our ethics liaisons in all departments, ward offices, and City Council committees, sending them the names of those who've not yet filed. As provided by law, we sent all non-filers regular reminders to file by the deadline. On May 15, we found 70 officials and employees in violation of the Ethics Ordinance, though that number has been reduced to 62, given additional facts we subsequently learned. We assessed a total of \$1,250 in fines, though there is still one (1) appointed official who has not filed, and that individual's fines continue to accrue at \$250 per day until they file. All of this is posted on our website, here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/FIS/2023/2023%20FIS%20Violations%20Posting%20May%202015.pdf>

All filed forms are posted and viewable here, where they stay for seven (7) years after they are filed:

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

Finally, all newly elected officials filed before they took their oath of office, and we post their forms on our website as well.

### Education

#### On-line Training

**For all employees and officials.** To date, approximately 15,275 employees (and two alderpersons) have completed the all-new 2023 mandatory online training (about 53% of the expected total). In particular, we want to call out the Chicago Police Department for singular mention—it is already at 85% completion! We are still collecting training plans for all departments and ward offices. The deadline for completing the training is before January 1, 2024.

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

**For all appointed officials.** To date, 137 appointed officials (approximately 28% of the expected total) completed the all-new appointed official version of the training; their deadline is also before January 1, 2024.

**For lobbyists.** 585 lobbyists have completed this training (about 72% of the total). This training must be completed before July 1, 2023. We are sending out regular email reminders to all those who have not trained. Those who do not complete the training by the deadline are also subject to fines of \$250 per day until they complete it.

#### Classes and other presentations

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

On June 6, we presented a class for all incoming Law Clerks in the Law Department. On June 8, we presented a class to all new employees in the Mayor's Office. On June 9, we presented a class to new 30<sup>th</sup> Ward Ald. Cruz and her staff. On June 12, we presented a class to all Mayoral Fellows.

We are in the process of scheduling in-person classes for all other new City Council members, as well as for Mayor Johnson and key members of his team.

### **Advisory Opinions**

Since the Board's last meeting, we have issued 231 informal advisory opinions—another extremely busy period. The leading categories for informal opinions were, in descending order: Travel; Gifts; Post-employment/revolving door; Statements of Financial Interests; City property; Lobbying; and Outside employment.

The leading City departments from which requesters came in this period were, in descending order: Police Department/Civilian Office of Police Accountability (COPA)/Community Commission for Public Safety and Accountability (CCPSA); Mayor's Office; City Council; Department of Public Health; Department of Planning & Development; and Chicago Public Library. 75% of all inquiries came from City employees or elected officials, the remainder from attorneys, vendors, or lobbyists or potential lobbyists.

Informal opinions are confidential and not made public, but are logged, kept, and used for training and future advisory purposes. This same practice occurs with our colleagues at the New York City Conflicts of Interest Board, who issue roughly the same number of informal opinions. They form the basis for much of our annual and periodic educational programs. Formal opinions are made public, in full text, with names and other identifying information redacted out.

In the past five (5) years, the Board has issued 67 formal opinions. There are no formal opinions on today's agenda for consideration.

### **Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions**

The full text of every formal Board opinion issued since 1986 is posted on the Board's website (more than 920), redacted in accordance with the Ordinance's confidentiality provisions, here:

[https://www.chicago.gov/city/en/depts/ethics/auto\\_generated/reg\\_archives.html](https://www.chicago.gov/city/en/depts/ethics/auto_generated/reg_archives.html).

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

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

Only a few other ethics agencies have comparable research tools. We are unaware of jurisdictions that make their *informal* opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement.

### **Lobbyists Filings**

There are currently 811 lobbyists registered with us, and we have collected \$353,100 in 2023 registration fees. Lobbyists' 2023 Q1 activity reports were due before April 21, 2023. Email reminders were sent to all lobbyists on March 31. After April 21, reminder letters were sent pursuant to Ordinance to late filers; those lobbyists' filings were due May 9. On May 25, we determined that one lobbyist had violated the Ordinance for failing to timely file the Q1 activity report, but did not fine the lobbyist.

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

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

### **Lobbying Law Revisions**

In late January and then in early May we met with representatives from the Mayor's Office and the philanthropic and public charity communities to discuss potential amendments to the lobbying laws as to registration by individuals who lobby on behalf of non-profit organizations. The current thinking is to include activity and/or compensation thresholds, such that individuals would be required to register once they lobby a specified number of hours in a calendar quarter

and/or are compensated a specified amount or more for lobbying in a calendar quarter. Note that: 1) this is precisely how peer cities like New York, Philadelphia, and Los Angeles regulate lobbying on behalf of non-profits and others; and 2) as in those cities, it will require personnel who lobby to keep time records, and make reasonable calculations as to their hours and compensation (as many are not compensated explicitly for lobbying, unlike for-profit contract lobbyists). With the impending change in administrations, however, we are doubtful that the law will be clarified soon. We pledge to work with the new administration to achieve a lobbying law that respects the needs of the non-profit community while ensuring the public knows of their lobbying activities.

### **Sister Agencies**

At the request of the Ethics Officer of the Chicago Public Schools (CPS), we reviewed and provided comments on draft revisions to CPS's ethics policy, and are in the process of reviewing and commenting on the ethics policy of the Chicago Park District. We will next meet with our fellow ethics officers from all the sister agencies, as well as the Cook County Board of Ethics and Cook County Assessor's Office on June 15.

### **Update of Vendor Databases**

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

A new, improved database of persons who have done business with the City was posted in late January, here: [https://www.chicago.gov/city/en/depts/ethics/supp\\_info/list-of-contractors.html](https://www.chicago.gov/city/en/depts/ethics/supp_info/list-of-contractors.html) and several sister agencies have updated their databases as well.

### **Chicago Casino**

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

### **Waivers**

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted seven (8) and denied two (2). By law, we make all granted waivers public on our website, here: [https://www.chicago.gov/city/en/depts/ethics/supp\\_info/Waivers.html](https://www.chicago.gov/city/en/depts/ethics/supp_info/Waivers.html).

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

We post a summary index of all investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board undertook without an IG investigation, based on probable cause findings the Board makes as a result of its review of publicly available information, where no factual investigation by the IG is necessary. *See*

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

The Board makes public the names of all violators and penalties it assesses when authorized by law to do so. But only in those that occurred after July 1, 2013, can the Board release the names of those found to have violated the Ordinance. Since July 1, 2013, there have been 86 such matters.

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

There are currently three (3) completed IG ethics investigations awaiting adjudication, including one matter on today's agenda for a probable cause finding. That matter was delivered to us on June 6. We are in the process of scheduling subject meetings in the first two matters, in which the Board has already found probable cause.

We post on our website and continually update an ongoing investigative record showing the status of every completed investigation brought to the Board by both the Office of Inspector General (17 since July 1, 2013) and the former Office of the Legislative Inspector General ("LIG"), since January 1, 2012, and the status of all 50 petitions to commence investigations presented to the Board by the LIG. We update it as appropriate, consistent with the Ordinance's confidentiality provisions. *See*

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

Whenever the IG presents the Board with a completed ethics investigation in which the IG believes there have been violations of the Governmental Ethics Ordinance, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance: the Board reviews the IG's report, recommendations, and the entirety of the evidence submitted in its completed ethics investigation, including a review to ensure that the IG conformed with the requirement that it complete ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that ethics investigations were commenced within five (5) years of the last alleged act of misconduct.

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

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

The process may seem cumbersome. However, it was added to the Ordinance on July 1, 2013, based on specific recommendations of then-Mayor Emanuel's Ethics Reform Task Force in Part II of its 2012 Report—the primary purposes being to: (i) guarantee due process for all those investigated by the IG (or former LIG); (ii) ensure that **only** the Board of Ethics could make determinations as to whether a person investigated by the IG violated the Ordinance, given the Board's extensive jurisprudence and unique expertise in ethics matters; and (iii) balance due process for those investigated by the IG with an accurate adjudication by the Board and the public's right to know of ethics violations.

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

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

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

Please note finally that, in all matters adjudicated or settled on or after July 1, 2013, the Board makes public the names

of all violators and penalties assessed, or a complete copy of the settlement agreement. All settlement agreements are posted here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/SettlementAgreements.html>

### **Disclosures of Past Violations**

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct and discloses to the Board facts leading it to conclude that they committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that they may self-report to the IG or, if he or she fails to do so within two (2) weeks, the Board must make that report. In 11 matters, the Board has determined that minor violations occurred, and the Board sent confidential letters of admonition, as required by the Ordinance. These letters are posted on the Board's website, with confidential information redacted out.

### **Litigation**

*Lee v. City of Chicago*. In June 2020, the City was sued in Cook County Circuit Court, Chancery Division, by a former City employee of the Civilian Office of Police Accountability (COPA). The case is *Jason W. Lee v. City of Chicago*, 2020 CH 04524. The plaintiff left City employment on February 28, 2020, and works as an attorney for the Policemen's Benevolent and Protective Association ("PBPA"). His suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague, and that the City is improperly attempting to regulate the practice of law by Illinois attorneys. It asked for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. After the matter was briefed by both sides, on July 31, 2020, the Honorable Anna Demacopoulos denied the plaintiff's request for a temporary restraining order. The plaintiff was granted leave to file an amended complaint, and filed one, adding an as-applied constitutional challenge. The City moved to dismiss the entire matter. On February 25, 2021, Judge Demacopoulos granted the City's motion to dismiss as to the facial challenge to sections 100(a) and (b) and also the as-applied challenge to section 100(a). The court, however, denied the motion concerning the as-applied challenge to section 100(b), but expressed concern that this claim may be moot. Count III was also dismissed; it asked for a declaratory judgment that, by enforcing the Ordinance, the City is violating PBPA members' right to "counsel of their choice." However, the court granted plaintiff leave to amend the complaint for all of the dismissed counts. Following the court's order on the City's motion to dismiss, the plaintiff was given leave to file an amended complaint, but he never did. Instead, he decided to move forward on the as-applied vagueness challenge to section 100(b) of the Ordinance. This is the only claim that survived the motion to dismiss. Judge Demacopoulos questioned whether this claim was moot in light of the expiration of the one year ban that applied to the plaintiff but left it up to the plaintiff whether he wanted to pursue the claim. Plaintiff may seek compensatory damages if he can prove that he suffered damage. The City filed its answer and affirmative defenses to the amended complaint on April 26, 2021. The plaintiff filed discovery requests. Board legal staff met with our attorneys in the Law Department and forwarded materials necessary to respond to these requests. The Judge seems to have gotten both parties to agree on a settlement amount that plaintiff would pay to the Board, pending approval from the parties. We are close to settlement, but opposing Counsel has been ill and withdrawn, so Mr. Lee is now representing himself *pro se*. The settlement it has not been finalized. The next status hearing is on June 14.

Note: several PBPA members filed grievances under their collective bargaining agreement, alleging that their right "to counsel of their choice" was violated by COPA. These were settled on terms that do not affect the Ordinance's post-employment provisions.

*Brookins v. Board of Ethics, et al.* The Honorable David Atkins in the Chancery Division of Cook County Circuit Court issued a ruling on October 18, 2022. The Judge dismissed every count in former Alderman Brookins's lawsuit against the Board and me personally except Count I; this includes dismissing the Count in which Alderman Brookins accused me of defamation *per se*. The surviving Count asks for a writ of certiorari to review the Board's decision to find him in violation of the Ordinance's Fiduciary Duty provision, alleging that the Board did not have jurisdiction or authority to find probable cause, nor to have a hearing, nor to find him in violation, nor to fine him, and that the Board did not provide him proper notice because we sent our findings to an attorney, who, he alleges, was hired solely for the purpose of sending a letter to the Inspector General to request an investigation of me, not to represent him in this Board matter. The Law Department represents the Board. Howard Brookins did not run for re-election. There was a status hearing on the matter on May 31, and Brookins put forth a proposed settlement agreement, which our counsel in the Law Department is reviewing.

*Czosnyka et al. v. Gardiner et al.*, docket number is 21-cv-3240. We and the City of Chicago are now dismissed out of this case. On June 17, six (6) individuals residing in the 45<sup>th</sup> Ward filed a lawsuit in United States District Court against 45<sup>th</sup> Ward Ald. James Gardiner and the City, alleging that their 1<sup>st</sup> Amendment rights were violated by the Ald.'s improper blocking of them on his "official" City social media accounts. The plaintiffs sought certification of a class of all those improperly blocked by the Ald. The suit also alleged that more than 20 complaints of improper blocking were filed with the Board and the IG, but the City "failed to take any action to reprimand Alderman Gardiner, although it has the power to do so," and thus "acquiesced in [the Alderman's] constitutional violations." It seeks to have the plaintiffs reinstated as full participants in these social media accounts and unspecified damages. The case is before the Honorable Judge Sharon J. Coleman.

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

### **Open Meetings Act Challenges**

The Board is involved in three (3) challenges recently filed with the Illinois Attorney General by the same objector regarding its discussions in Executive Session. The Board is working with the Law Department and responded to each.

### **FOIA Challenge**

The Board was involved in one (1) challenge recently filed with the Illinois Attorney General by the same objector listed above. The Board worked with the Law Department and responded to this challenge. The challenge was for withholding documents relating to Board Case 22033.Q, concerning an advisory opinion the Board approved at the November 2022 meeting. This matter was also pending before the Public Access Counselor at the Illinois Attorney General's Office and was closed after we released documents to the requestor.

### **Freedom of Information Act**

Since the last Board meeting, the Board has received two (2) request(s).

The first request was for a list of our employees, all FOIA requests 2023 and FOIA training certificates; we provided all records.

The second was for information about the Board; training certificates of the FOIA Officer; and that officer's personnel file; we sent all located records and advised that we are the wrong public body to maintain a personnel file.

### **Employee Vaccination Status**

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