

## Executive Director's Report December 13, 2021

### **Potential Amendments to the Ordinance**

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>

Staff continues to work on other potential Ordinance amendments, in conjunction with Chair Michele Smith of the City Council's Committee on Ethics and Government Oversight, perhaps to be presented in December, or January 2022.

Amendments to the State of Illinois's Lobbyist Registration Act ("LRA"), 25 ILCS 170/1 et seq., take effect on January 1, 2022. The City of Chicago is exempt from certain amendments, and our lobbyist registration law and associated post-employment and cross-lobbying bans will remain in effect, not subject to the weaker standards imposed by the amendments to State law. However, a question remains open as to whether lobbyists who register with our office thereby need to double-register with the Secretary of State, which administers the LRA.

### **Board members**

The nomination of Ryan Cortazar as a member to replace Daisy Lezama was submitted to the City Council. He will appear before the Council's Committee on Ethics and Government Oversight on December 14 (I will be present as well). If confirmed by the Council at its December 15 meeting, he would be a Board member in time for the Board's January 2022 meeting. He is an attorney with the Chicago office of the St. Louis-based law firm Korein Tillery, and also served as an Assistant Compliance Officer with the Office of the Inspector General (IG) from 2011-2013.

### **Employee Vaccination Status**

I'm pleased to report that all eight (8) staff members are fully vaccinated for Covid-19, and in compliance with the City's policy on vaccinations.

### **Education**

#### **On-line Training**

**For appointed officials.** To date, all but 11 appointed officials have completed the annual training for appointed officials. We will not 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, 30,514 employees and all 50 aldermen completed the program (leaving 149 employees who have not yet completed the training). This puts the City at 99.5% compliance City-wide. 14 employees are currently in progress. We extended the deadline several times, but at this point, due to Covid-19, and the fact that the training must, by design, be completed from a City computer, there are simply too many outstanding non-trained personnel to enforce the fine provisions in the law.

We completed writing the next on-line program and will post it in January 2022. Despite Covid, we *will* enforce the law in 2022, as the next program must be completed before January 1, 2023. We have worked with the Department of Human Resources to migrate our training programs to the City's e-learning management system. This will enable users to take the training from *any* computer. The current and all previous training programs were designed deliberately to be taken only from City computers, for security reasons. We will draft and post a new program for the City's 600+ appointed officials, including members of this Board, in February 2022.

**For lobbyists.** To date, 248 lobbyists have completed the newest annual on-line training, also posted on the City-wide e-learning system. They have until July 1, 2022 to complete the program.

#### **Classes and other presentations**

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

We have been contacted to make a presentation to the United Northwest Side Organization at their regular meeting and may do this in January or February.

On December 10, I gave a 45 minute presentation to the Election Law Committee of the Chicago Bar Association, to talk about the City's limitations on political contributions and recent developments related to upcoming 2023 elections. I have presented to this Committee multiple times in the past.

### **Council on Governmental Ethics Laws ("COGEL")**

COGEL's annual conference was held last week, virtually. It was my last official conference as a member of the Steering Committee, and as the organization's Immediate Past President. It has been an honor to serve, and I appreciate the support from our Board members. COGEL is a fine organization, the only one of its kind, and I and other staff members will continue our involvement by doing committee work.

### **Advisory Opinions**

Since the Board's last meeting, we have issued 305 informal advisory opinions. The leading categories for informal opinions were, in descending order: Gifts; Travel; City Property; Outside Employment; Post-employment; and Lobbying, Campaign Financing and Political Activity.

The leading City departments from which requesters came in this period were, in descending order: City Council; Office of the Mayor; Police Department/Civilian Office of Police Accountability (COPA); Law Department; Department of Cultural Affairs and Special Events; Department of Public Health; and Department of Assets, Information and Services.

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

In the past five (5) years, the Board has issued 62 formal opinions, including 11 this year.

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

The full text of every formal Board opinion issued since 1986 is posted on the Board's website (more than 915), redacted in accordance with the Ordinance's confidentiality provisions, here:

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

Redacted opinions are posted once issued by or reported to the Board. Summaries and keywords for each of these opinions are available on the Board's searchable index of opinions, here:

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

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. The opinion issued by Board staff that will be discussed in Executive Session will be added to these sites.

### **2021 Statements of Financial Interests**

All City employees and officials required to file their 2021 Statements have now filed them (3,719). As of May 12, we began assessing daily fines of \$250 to all who had not then filed. We collected \$19,300 in late fines.

### **Lobbyists: Q3 Reports**

As of today, we have 892 registered lobbyists – an all-time record -- and the Board has collected \$441,375 in registration fees for 2021. 3Q activity reports were due before October 21. On November 12, as required by law, staff sent due process letters to five (5) lobbyists who had not yet filed their 3Q activity reports. Their responses or filings were due before November 24. I'm pleased to report that, as of November 24, they all had filed.

### **Personnel Rules Revisions**

In conjunction with the Mayor's Office, Departments of Human Resources, Law, Buildings, Business Affairs and Consumer Protection, and others, we worked on updating the City Personnel Rules, which were last revised in 2014. In particular, we are assisting on revisions to Rule XXIX, entitled "Conflict of Interest," with respect to: (i) conforming the Rules to the current version of the Governmental Ethics Ordinance; and (ii) expanding that Rule to prohibit City employees from making certain recommendations as to the hiring of other City employees and to recommending vendors or tradespeople to persons who are subject to inspections, permit reviews, etc.

### **Department Consultations**

We assisted the Departments of Public Health and Business Affairs and Consumer Protection on revising their internal gift and conflicts of interests policies and are working with the Commission on Human Relations to formulate a policy governing its employees' service on non-profit and other boards. We also consulted with the Budget Office as to applicable ethics restrictions on the new Community Microgrants Program.

### **Waivers**

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted seven (7) and denied two (2). By law, we make all granted waivers public on our website.

### **Sister Agency Ethics Officers**

We will meet next in January with the ethics officers from the other local governmental agencies: the Cook County Board of Ethics, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, Cook County Assessor's Office, Cook County Inspector General's Office (who are responsible for the MWRD) and Chicago Housing Authority.

### **Chicago Casino bids, the Board's Work per the Illinois Gambling Act**

As was widely reported, the City received five (5) bids for a Chicago casino. In the Fall of 2020, 11 firms responded to the City's RFI (request for information) regarding interest in placing and operating a casino in Chicago. Both have 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 prison.

Board staff worked closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City officials and employees are informed of these reporting (and eventually, substantive ethics) requirements and prohibitions. There were 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, after responses to the City's recently issued RFP (request for proposals) are analyzed. Note that the Gambling Act's reporting requirements are in addition to the restrictions in the City's Governmental Ethics Ordinance that would apply to those "applicants" who "communicate" with City officials or employees, such as the Ordinance's gifts restrictions and lobbyist registration requirements.

### **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.

There are two (2) such matters on today's agenda for status reports only.

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, 129 such matters. But only in those that occurred after July 1, 2013 can the Board release the names of those found to have violated the Governmental Ethics Ordinance. Since July 1, 2013, alone, there have been 56 such matters.

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

There are currently no completed IG ethics investigations awaiting adjudication.

We post on our website and continually update an ongoing investigative record showing the status of every completed investigation brought to the Board by both the IG (13 since July 1, 2013) and the former Office of the Legislative Inspector General (“LIG”), since January 1, 2012, and the status of all 50 petitions to commence investigations presented to the Board by the LIG. We update it as appropriate, consistent with the Ordinance’s confidentiality provisions. *See*

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

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

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

If the subject is unable to rebut the Board’s *prima facie* probable cause finding, the Board may enter into a public settlement agreement – or the Board or subject may decide to proceed to a merits hearing that is not open to the public. That hearing would be held before an administrative law judge (ALJ) appointed by the Department of Administrative Hearings. The City would be represented by the Law Department (or a specially hired Assistant Corporation Counsel for that purpose), and the subject by their attorney. At the conclusion of the hearing, the ALJ submits 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 one or more violations of the Ethics Ordinance, or find 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 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 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: fines range from \$500-\$2,000 per violation for non-lobbying law violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for violations occurring after that, except for unregistered lobbying violations, the penalties for which are \$1,000 per day beginning on the fifth day after the individual first engaged in lobbying and continuing until the individual registers as a lobbyist.

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

## **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 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, 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. 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. As a reminder, this is the only claim that survived the motion to dismiss. While Judge Demacopoulos questioned whether this claim was moot in light of the expiration of the one year ban that applied to the plaintiff, she 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.

The plaintiff recently filed discovery requests. Board legal staff met with our attorneys in the Law Department and forwarded materials necessary to respond to these requests. There have been discussions regarding possible settlement of the matter as well.

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

Johnson v. City of Chicago. On October 14, 2020, a now-former elected member of the Library Board of Wilmette (an Illinois unit of local government), sued the City in federal court. The case is *Dan Johnson v. City of Chicago*, No. 1:20-cv-06119. The plaintiff asked the court for a preliminary injunction preventing the City from enforcing the "cross-lobbying" ban, §2-156-309, on the basis that it violated his rights of free speech and association under the First Amendment of the U.S. Constitution. On May 14, the Honorable John Robert Blakey granted the City's motion to dismiss the suit on mootness grounds, as the plaintiff is no longer a Wilmette elected official, and thus would not be precluded from registering as a lobbyist with our office. However, the dismissal was without prejudice, meaning that a new plaintiff could file a similar lawsuit.

Brookins v. Board of Ethics, et al. This matter is assigned to the Honorable David Atkins in the Chancery Division of Cook County Circuit Court. The Board's and my attorneys have moved to dismiss the entire lawsuit and have submitted briefs. We await a decision.

Czosnyka et al. v. Gardiner et al., docket number is 21-cv-3240. 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 seek certification of a class of all those improperly blocked by the Ald. The suit also alleges that more than 20 complaints of improper blocking were filed with the Board and the OIG, but to City "failed to take any action to reprimand Alderman Gardiner, although it has the power to do so," and thus "has acquiesced in [the Alderman's] constitutional violations." It seeks to have the plaintiffs reinstated as full participants in these social media accounts and unspecified damages. The case is before the Honorable Judge Sharon J. Coleman.

On October 26, Judge Coleman granted the City's motion to dismiss it from the suit. The residents sought to hold the City liable under the "failure to discipline" *Monell* theory of municipal liability. Specifically, they argued that the City should be held liable for failing to investigate Alderman Gardiner through the Office of the Inspector General and also for failing to fine him through the Board of Ethics. In dismissing the City, Judge Coleman ruled that the plaintiffs lacked standing, and that they pled themselves out of court by alleging that Alderman Gardiner, not the City, "had final say" in operating his Facebook page and acted based upon his "sole discretion." Judge Coleman also held that the plaintiffs failed to satisfy the requirements for holding the City liable under the "failure to discipline" *Monell* theory. She explained that this *Monell* framework requires a showing of deliberate indifference on the part of the municipality, but here Mayor Lori Lightfoot herself asked the Inspector General to investigate Alderman Gardiner, thereby showing that the City was *not* deliberately indifferent. Judge Coleman held that the City's alleged failure to discipline Alderman Gardiner could not have been a "moving force" behind any constitutional violation. Plaintiffs filed a motion asking the Judge to reconsider her opinion, which is still pending.

Note that Alderman Gardiner has retained independent counsel and also moved to dismiss the suit on the basis that the social media site does not constitute an "official City site."

### **Freedom of Information Act**

Since the last Board meeting, the Board has received seven (7) requests.

The first request was for our confidential records relating to and statements of financial interests filed by a City Council member; we responded that we were not authorized to release confidential records and gave the link to our website where statements of financial interests could be located.

The second was a City-wide request for records arising from online testimony given to the federal legislature; we sent a template response prepared by the Law Department.

The third request was for records kept by the Department of Transportation; we advised the requestor that we were the wrong department.

The fourth was a City-wide request for records arising from certain criminal issues not involving our agency; we sent a template response prepared by the Law Department.

The fifth was the same as the third request with a slight variation.

The sixth was a request for information and not records; we requested input from the Law Department and responded that FOIA only addresses providing records.

The seventh was for any records about a City employee; we had none and advised the requestor accordingly.