

**THE ETHICS AND
OPEN MEETINGS GUIDE
FOR
BOARD & COMMISSION MEMBERS**



**CITY OF CHICAGO
RAHM EMANUEL, MAYOR**

BOARD OF ETHICS

DEPARTMENT OF LAW



OFFICE OF THE MAYOR
CITY OF CHICAGO

RAHM EMANUEL
MAYOR

2013

Dear Board and Commission Members:

As Mayor and on behalf of the City of Chicago, I would like to extend my thanks for your service on the boards and commissions of our City. Our boards and commissions are a vital part of City government, and your hard work and dedication make a real difference in the lives of our residents.

We all have a responsibility to maintain the highest standards of ethical conduct in our official duties. This responsibility extends to every employee, official and public servant, including board and commission members.

The *Ethics and Open Meetings Guide for Board & Commission Members* was created to help you understand the various ethics rules that apply to your position and to update you on recent changes to these rules. I urge you to read these guidelines and become familiar with the ethics rules that govern your official conduct. Know that you have resources available to assist you when questions arise.

Thank you again for your dedication and your commitment to the City of Chicago and its residents.

Sincerely,

Mayor

Dear Board and Commission Members,

The boards and commissions on which you serve are critical to the work of the City of Chicago, and it is your talents and efforts that make them possible. Your membership is a testament to your dedication to public service and the responsibilities that follow.

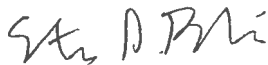
The Ethics and Open Meetings Guide for Board & Commission Members was prepared to help you understand the ethics standards and legal requirements which govern your appointment as a City official. It is important to remember that, while the text of the guide lays out key ethical standards and state laws, no summary of rules can govern every conceivable situation. Your good judgment is critical to ensuring that the highest standards of compliance are met in your everyday work activities. If you are unclear about a course of action, seek advice.

The Board of Ethics and Department of Law are committed to the achievement of professional ethical conduct at the City. For this reason, our departments are also available to address any questions or concerns you may have regarding the contents of this guide, and we look forward to working with you.

Thank you for your dedication and service. We greatly appreciate your commitment and recognize that your boards and commissions are vital resources to the City of Chicago and its residents.

Sincerely,

Steve Berlin



Executive Director
Chicago Board of Ethics

Stephen Patton



Corporation Counsel
Department of Law

TABLE OF CONTENTS

Introduction.....	1
I. Restrictions and Requirements Under City Law	
A. Governmental Ethics Ordinance.....	2
Fiduciary Duty	
Aspirational Code of Conduct	
Conflicts of Interest/Improper Influence	
Recusal – City Policy for Board or Commission Members	
Representation or “Lobbying” on Behalf of Clients or Employers	
Ownership Interests in City Business or Contracts	
Financial Disclosure	
Gifts	
Solicitation or Receipt of Money for Advice or Assistance	
Employment of Relatives or Domestic Partners	
Political Fundraising and Contributions	
Post-employment Restrictions	
Other Provisions	
B. Hiring Restrictions.....	9
II. Restrictions and Requirements Under State law	
A. Open Meetings Act.....	10
What Meetings Must Be Open?	
Taping and Filming	
Procedures for Closing Meetings	
Recording Closed Meetings; Minutes	
Public Notice of Time and Place	
Duty to Post Benefits Information	
Enforcement	
B. Public Officer Prohibited Activities Act & Prohibited Interests in Municipal Contracts.....	19
Prohibited Interests in Contracts	
What Does it Mean to be “Financially Interested?”	
Are There Exceptions?	
C. Lobbyist Restriction Act.....	22
Appendix: Resources.....	23
Chicago Board of Ethics	
Chicago Department of Law	
Illinois Attorney General	
Illinois Compiled Statutes	
City of Chicago Ethics Ordinance	
Ethics and Open Meetings Online Training Program	

INTRODUCTION

This guide provides summaries of key laws and regulations that govern Chicago's boards and commissions. It is meant to help you understand and comply with ethics rules and open meeting regulations, and be aware of certain prohibited activities. After you have reviewed the guide, you should complete the online Ethics and Open Meetings Training Program for Board and Commission Members by using the password-protected link sent to City appointed officials directly by the Board of Ethics.

Please note: This guide is intended to provide useful information to members of boards and commissions created by the City of Chicago, but should not be regarded as a substitute for obtaining legal advice and consulting with the Board of Ethics or Law Department. It is impossible to address every individual's circumstances with respect to the many complex laws applicable to members of boards and commissions. Further, laws and judicial interpretations of laws are constantly subject to change.

I. RESTRICTIONS AND REQUIREMENTS UNDER CITY LAW

A. GOVERNMENTAL ETHICS ORDINANCE (Chapter 2-156 of the Municipal Code of Chicago)

The City of Chicago's Governmental Ethics Ordinance imposes restrictions on the conduct of all officials of the City. "Official" means any person holding any elected office of the City or any appointed, non-employee member of any City agency. The following is a general summary of key restrictions that apply to persons appointed to serve on a City board or commission. To the extent that this summary differs from the language of the Ordinance, the language of the Ordinance is controlling. A copy of the Ethics Ordinance is available on request as well as online at <http://www.cityofchicago.org/content/dam/city/depts/ethics/general/Ordinances/GEO-July2013.pdf>.

1. FIDUCIARY DUTY

Every appointed official owes a fiduciary duty to the City – that means a duty of loyalty. The fiduciary duty provision of the Ordinance obliges appointed officials to put the interests of the City first, ahead of other loyalties or concerns, when acting in an official capacity. (2-156-020.)

2. ASPIRATIONAL CODE OF CONDUCT

Every appointed official must abide by the City's aspirational code of conduct. This code requires them, among other things, to put the public's interests ahead of their own personal interests, act impartially in their City duties, and not engage in any business that is inconsistent with their public duties.

3. CONFLICTS OF INTERESTS/IMPROPER INFLUENCE

An appointed official shall not make, participate in making, or attempt to use his or her City position to influence City decisions or actions with respect to any matter in which the official has an "economic interest" distinguishable from that of the general public. (2-156-030 (a) and -080(a).)

An "economic interest" is any interest capable of being valued in monetary terms. (There are certain exclusions (2-156-010(i) and (l)).)

For example, if an appointed official has an ownership interest in a business, that official has an economic interest in the business and in matters that relate to or may enhance that business. If an appointed official is employed by a business, then the official has an economic interest in his or her employer and in matters that are related to or may enhance the employment. Thus an appointed official may not participate in, or use the official's City position to influence, any City decision or action that affects a business the official owns or any City decision or action that is related to or may enhance the official's employment. Please note that the prohibition in the Ethics Ordinance regarding conflicts of interest is in addition to 50 ILCS 105/ and 65 ILCS 5/3.1.55- 10 discussed below. Further, in a few instances an ordinance or statute may impose

additional requirements regarding conflicts of interest, such as those that are applicable to the Community Development Commission in TIF projects. (e.g. 65 ILCS 5/11 74.4 4(n).)

4. RECUSAL—CITY POLICY FOR BOARD OR COMMISSION MEMBERS

The prohibition against conflicts of interest contained in the Ethics Ordinance may require a board or commission member to recuse himself or herself on a matter that is under consideration by the board or commission. In such cases, it is the policy of the City that the member must:

- (i) Not vote on the matter;
- (ii) Publicly disclose orally on the record of the public body or in writing, prior to deliberations on the matter, the existence of the potential conflict of interest; and
- (iii) Remove himself or herself from the room in which deliberations are taking place during the entire time of deliberations on the matter and while the vote on the matter is being taken.

An oral or written disclosure of the existence of a potential conflict of interest will be entered into the minutes of the public body for the meeting in which the deliberations were made.

5. REPRESENTATION

An appointed official shall not represent any person other than the City in a transaction or proceeding before any City agency, unless the matter is wholly unrelated to the official's City duties and responsibilities. (2-156-090(c).)

For example, an officer of a nonprofit group who serves as an appointed member of a City board may not speak or write on behalf of that group before any agency of the City unless the matter is wholly unrelated to the official's City duties.

An appointed official shall not represent any person in any judicial or quasi-judicial proceeding in which the City is a party and that person's interest is adverse to the City unless the matter is wholly unrelated to the official's City duties and responsibilities. (2-156-090(c).)

An appointed official is not prohibited from having an economic interest in the representation of persons in such matters.

6. OWNERSHIP INTERESTS IN CITY BUSINESS OR CONTRACTS

Except with respect to certain programs designated by the Department of Housing and Economic Development, an appointed official shall not have a **"financial interest"** in any contract, work or business of the City, or the sale of any article, if the expense or price is paid with funds belonging to or administered by the City, or is authorized by Ordinance, unless the transaction is wholly unrelated to the official's City duties and responsibilities. Please note that this

requirement is in addition to the conflict of interest provision of the ordinance, and 50 ILCS 105/ and 65 ILCS 5/3.1.55-10, both of which are discussed below. (2-156-110.)

A "**financial interest**" means any ownership interest held by a City official or employee with a value of more than \$1,000, but does not include compensation from employment or certain stock holdings in public companies if acquired prior to November 1, 2012. (2-156-010(1.))

For example, an appointed member of a City board that owns a business that is awarded a contract administered by the City will be in violation of the Ethics Ordinance unless (1) the contract is wholly unrelated to the official's City duties, or (2), alternatively, the official's ownership percentage in the company or person with the contract, when multiplied by the gross amount of the contract, yields a figure of less than \$1,000.

Note: this prohibition does not per se apply to contracts, work or business of the City's sister agencies, like the Chicago Transit Authority, Park District or Public Schools. However, it does apply to contracts of the Public Building Commission to construct City facilities, because these contracts are paid with funds belonging to the City and are authorized by Ordinance. Thus, any contract between a company owned by an appointed official and the PBC must be wholly unrelated to work of the official's City board or commission.

Ordinarily an appointed official's employment by a person or business (without an associated ownership in the person or business) that has a contract with the City does not give the appointed official a "**financial interest**" in the City contract. However, there are exceptions. For authoritative guidance, appointed officials should contact the Board of Ethics.

If an appointed official has a "**financial interest**" in any matter pending before any City agency, the official must disclose that interest to the Board of Ethics, and, if it is pending before the official's own agency, to the head of the agency.

These prohibitions do not apply to contracts with businesses owned by family members of a City official, as long as the official does not participate in the operation or management of his or her family members' businesses.

7. FINANCIAL DISCLOSURE

A Statement of Financial Interests must be filed with the Board of Ethics by appointed officials of City boards and commissions, except appointees to agencies that are solely advisory in nature and have no authority to make binding decisions, enter into contracts, or make expenditures. The filing can be done on the internet. The types of information to be disclosed include:

- (i) most sources of income;
- (ii) the identity of real estate in the City in which the official has a financial interest;
- (iii) the identity of certain debts over \$5,000 if the creditor or debtor does business with or work for the City; and

(iv) the identity of any person or entity conducting business in the City in which the official had a financial interest in the preceding year.

Appointed officials who are required to file a statement must file their initial statement when their names are submitted to the City Council for consideration, and then by May 31 each year of their term of office. If an appointed official serves on more than one board or commission whose members must file this form, or otherwise is required to file this form by law, he or she is required to file only once in the calendar year. These forms, along with a list of boards and commissions whose members must file a statement, are available from the website of the Board of Ethics, . These forms should not be confused with the Statement of Economic Interests, which many appointed officials must file with the Cook County Clerk. Many people must file both forms.

8. GIFTS

Appointed officials of a City board or commission are subject to the gift provisions of the City's Ethics Ordinance and not the "State Gift Ban Act." (2-156-142.)

An appointed official, his or her spouse, domestic partner, and minor children or immediate family members residing with him or her, may not accept:

- anonymous gifts;
- gifts of cash or its equivalent, including gifts cards, regardless of value, except from relatives or personal friends, or gifts given in the normal course of his or her non-City business or profession;
- gifts from anyone other than a relative or personal friend, unless the gifts are worth \$50 or less or are cash or a cash equivalent;
- gifts based on any mutual understanding that they would influence decisions, judgments or actions concerning City business;
- gifts or other things of value in return for advice or assistance on matters concerning City business; provided, however, that this does not prevent appointed officials from accepting compensation for services wholly unrelated to the official's City duties and rendered as part of the official's non-City employment, occupation or profession.

An appointed official and his or her family may accept gifts on behalf of the City, provided the gifts are reported promptly to the Board of Ethics and to the City Comptroller.

An appointed official may accept compensation for reasonable travel and entertainment expenses incurred in connection with a public event if the event is related to City business and if the person providing these expenses is the sponsor of the event. (Note: the Board has determined that a sponsor is the event's organizer, not just a contributor to the event.)

An appointed official may accept gifts given in the normal course of his or her non-City business, occupation or profession.

9. SOLICITATION OR RECEIPT OF MONEY FOR ADVICE OR ASSISTANCE

An appointed official (or the official's spouse, domestic partner, or minor child) may not solicit or accept any money or anything else of value in return for advice or assistance on matters concerning the operation of business of the City, but an appointed official (or the official's spouse, domestic partner or minor child) is not prohibited from accepting compensation for services that are wholly unrelated to the official's City duties and responsibilities, and rendered as part of the official's non-City employment, occupation or profession. (2-156-050.)

For example, an appointed official may not receive any compensation for advising a client of the official's non-City business about matters that relate in any way to the work of the official's Board or Commission. If, however, the official's non-City firm represents or assists a client in a matter before the official's Board or Commission, the appointed official must "recuse at both ends"—the official may not assist the firm in the matter, and must recuse himself or herself when the matter is before the board or commission. Provided these conditions are met, the official may receive his or her share of the firm's compensation in the matter.

10. EMPLOYMENT OF RELATIVES OR DOMESTIC PARTNERS

An appointed official shall not hire or supervise his or her relatives or domestic partner or advocate employment of his or her relatives or domestic partners for jobs in City agencies in which the official serves. (2-156-130(a).)

An appointed official shall not hire or advocate for hiring any person in the City agency in which he or she serves in exchange for having a relative or domestic partner hired by any other City official or employee. (2-156-130(b).)

Appointed officials shall not exercise contract management authority over a contract with a person doing City work who employs or has a contract with a relative or domestic partner of the appointed official. Contract management authority means personal involvement in or direct supervisory responsibility for the formulation or execution of a City contract. (2-156-130(c).)

11. POLITICAL FUNDRAISING AND CONTRIBUTIONS

An appointed official shall not compel, coerce or intimidate any other official or employee to make, refrain from making, or solicit any political contributions, or intentionally misappropriate City property or the services of any other City official or employee by requiring them to perform prohibited political activity. (2-156-135(b).)

Appointed non-elected officials shall not knowingly solicit or accept any political contributions from a person doing business or seeking to do business with the City. However, an appointed official who is a candidate for public office may solicit or accept political contributions on behalf

of his or her own candidacy from a person doing business or seeking to do business with the City, subject to the same restrictions that apply to elected officials. (2-156-140(b).)

Appointed officials who are (i) registered lobbyists; (ii) persons doing business with the City or seeking to do business with the City or any of its sister agencies; or (iii) have done business with the City or any of its sister agencies in the previous 4 years, may not make contributions in an aggregate exceeding \$1,500: (i) to any candidate for city office during a single candidacy; or (ii) to an elected official of the government of the City during any reporting year of his or her term; or (iii) to any official or employee of the City who is seeking election to any other office. Otherwise, appointed officials are subject to the standard limitations on political contributions in Illinois State law: \$5,300 in contributions to any single local, county or statewide candidate's political committee in an election cycle. (2-156-445)

Persons with contract management authority may not serve on political fundraising committees. (2-156-140(c).)

Use of City time or property for any political purpose is prohibited.

12. POST-EMPLOYMENT RESTRICTIONS

One-year Prohibition. For a period of one year after completing the term of office, a former appointed official shall not assist or represent anyone in a business transaction involving the City if the official participated personally and substantially in the subject matter of the transaction during the official's term of office.

Permanent Prohibition - Contracts. A former appointed official is permanently barred from assisting or representing any person as to a contract involving the City, if the official was personally involved in or had direct supervisory responsibility for the formulation or execution of that contract in the course of the official's term of office.

Permanent Prohibition - Proceedings. A former appointed official shall not represent any person other than the City in any judicial or administrative proceeding involving the City if the official participated personally and substantially in the proceeding during the official's term of office.

Two-Year Lobbying Prohibition. All persons appointed by Mayor Emanuel to City boards or commissions may not, for two years after leaving City service, lobby a City department, agency or commission in which they served, or any City employee or official in a department, agency or commission in which they served. "Lobbying" means acting on behalf of another person, such as an employer or client, to influence any City governmental action. All persons appointed by Mayor Emanuel to City boards and commissions must sign an Ethics Pledge obligating them to comply with these lobbying restrictions; this pledge must be signed within two weeks of their appointment or re-appointment (if the reappointment is after November 1, 2012). The pledge reads:

"As a condition, and in consideration, of my employment or appointment by the City of Chicago in a position invested with the public trust, I shall, upon leaving government employment or appointment, comply with the applicable requirements of Section 2-156-105 of the Chicago Municipal Code imposing restrictions upon lobbying by former government employees, which I understand are binding on me and are enforceable under law.

"I acknowledge that Section 2-156-105 of the Chicago Municipal Code, which I have read before signing this pledge, imposes restrictions upon former government employees and appointees and sets forth the methods for enforcing them. I expressly accept the applicable provisions of Section 2-156-105 of the Chicago Municipal Code as part of this agreement and as binding on me. I understand that the terms of this pledge are in addition to any statutory or other legal restrictions applicable to me by virtue of government service."

The Board of Ethics maintains signed pledges. A list of persons who have signed this pledge can be found at http://www.cityofchicago.org/city/en/depts/ethics/dataset/ethics_pledge.html.

13. OTHER PROVISIONS

An appointed official shall not use or reveal confidential information gained in City service. (2-156-070.) (This prohibition is permanent, and also applies after the appointed official's City service ends.)

An appointed official shall not engage in or permit the unauthorized use of City-owned property. (2-156-060.) For example, an appointed official may not use a City business card or City title in a private business transaction, or to gain some kind of advantage in a private interaction.

This summary is only an overview intended to help appointed officials develop a basic understanding of their responsibilities under the City's Governmental Ethics Ordinance. For authoritative guidance on specific questions, consultation with the Board of Ethics is recommended. The Board will maintain confidentiality requirements of the Ordinance. For assistance, call the Board at 312-744-9660.

B. HIRING RESTRICTIONS

(Executive Order No. 2007-1)

Although members of City boards and commissions are not employees and their appointments are not considered employment actions, as City officials you should be aware of the restrictions that apply to City hiring.

The City of Chicago does not permit political considerations to be used as a determining factor in any City employment action. Except for certain exempt positions, it is unlawful to take political considerations into account in any employment actions, such as, but not limited to, recruitment, hiring, promotions, transfers and acting up. (Executive Order No. 2007-1, 2.)

Political considerations include the following:

- (i) Recommendations from public office holders or political party officials that are not based on personal knowledge of the job applicant's work skills, work experience or other job-related qualifications. (Executive Order No. 2007-1, 2(a).)
- (ii) The fact that the job applicant worked on a political campaign or belongs to a political organization, or political party, or the fact that the job applicant chose not to work in a political campaign or to belong to a political organization or a political party. The mere fact that a person worked for a political campaign for elective office does not prohibit consideration of a recommendation related to that person insofar as the basis for that recommendation relates to the person's relevant work experience. (Executive Order No. 2007-1, 2(b).)
- (iii) The fact that the job applicant contributed money, raised money, or provided something of value to a candidate for public office or a political organization, or the fact that an applicant chose not to contribute or raise money for a candidate for public office or a political organization. (Executive Order No. 2007-1, 2(c).)
- (iv) The fact that the applicant is a Democrat or a Republican or a member of any other political party or group, or the fact that the applicant is not a member. (Executive Order No. 2007-1, 2(d).)
- (v) The fact that the person expressed views or beliefs on political matters such as what candidates or elected officials he or she favored or opposed, what public policy issue he or she favored or opposed, or what views on government actions or failures to act he or she expressed. (Executive Order No. 2007-1, 2(e).)

II. RESTRICTIONS AND REQUIREMENTS UNDER STATE LAW

A. OPEN MEETINGS ACT (5 ILCS 120)¹

All meetings of public bodies are required to be open to the public unless the meeting falls under an exception detailed in the State of Illinois Open Meetings Act, 5 ILCS 120/2(c). Where a closed meeting is held, the public body must comply with the requirements in 5 ILCS 120/2a.

1. WHAT MEETINGS MUST BE OPEN?

a. Types of Bodies Covered; Training

The Act applies to all public bodies, whether State or local, administrative or advisory, executive or legislative, paid or unpaid. (5 ILCS 120/1.02.) The Act covers meetings of subgroups, such as committees and subcommittees. Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body. (5 ILCS 120/2.06(g).)

The Act applies only to public bodies. It does not apply to private, not-for-profit corporations. It does not apply to ad hoc advisory groups that are not created by law, ordinance or executive order.

Each elected or appointed member of a public body subject to the Open Meetings Act must, on a one-time basis, successfully complete an electronic training on the Open Meetings Act administered by the Public Access Counselor in the Office of the Illinois Attorney General. Elected or appointed members of a public body must complete this training no later than the 90th day after either taking the oath of office or, if not required to take an oath of office, after otherwise assuming responsibilities as a member of the public body. Furthermore, public bodies must designate employees, officers or members who will receive annual training in compliance with the Act from the Public Access Counselor. These employees, officers or members must complete this training within 30 days of being so designated. (5 ILCS 120/1.05.)

b. Types of Gatherings Covered

“Meeting” means any gathering of a majority of a quorum of the members of a public body held for the purpose of discussing public business. (5 ILCS 120/1.02.)

The definition is a three-part one. It requires that there be:

- (i) a gathering (ii) of a majority of a quorum, or simply a quorum in the case of a five-member board (iii) to discuss public business.
- (ii) The term “gathering” includes in-person, telephonic, and electronic assemblages, such as email and instant messaging. A conference call is a “meeting” for purposes of the

¹ This portion of the Guide is adapted from the Illinois Attorney General’s Guide to the Illinois Open Meetings Act (Revised 2004), a much more comprehensive document that is available on the Illinois Attorney General’s Website.

Open Meetings Act when a majority of a quorum of a public body participates in such a call. It is important to note that the purpose of the Act is to ensure that the actions of public bodies are taken openly and that their deliberations are conducted openly.

- (iii) The second part of the definition applies it to a majority of a quorum of the body. A majority of all members is generally a quorum, so, for example, a majority of a quorum of a seven-member board normally is three. However, in the case of a five-member board, a quorum, which is three, is necessary instead of only a majority of a quorum.
- (iv) The third part of the definition applies it to gatherings “held for the purpose of discussing public business.” The Act does not apply to purely social gatherings, but a gathering that is not “held for the purpose of discussing public business” at the outset is subject to conversion to a meeting at any point.

The phrase “discussing public business” refers to an exchange of views and ideas among public body members, on any item germane to the affairs of their public body. The discussion need not be aimed at reaching an immediate decision in order to be considered a discussion of public business.

Note that the commission may take action only if a quorum of its members is physically present at a meeting. However, members may attend by electronic means under certain circumstances (illness or disability, employment or emergency) if approved by a majority of the members of the body. (5 ILCS 120/2.01.)

c. Exceptions—When Closing a Meeting is Allowed

The Act requires every meeting of a public body to be open to the public unless the meeting falls within one or more of the exceptions contained in 5 ILCS 120/2(c).

The exceptions to the Open Meetings Act are limited in number and very specific. The exceptions are also subject to the following:

- The exceptions are to be strictly construed, extending only to subjects clearly within their scope. (5 ILCS 120/2(b).)
- The exceptions authorize but do not require the closing of a meeting falling within their scope. (5 ILCS 120/2(b), 2a.)
- Discussion in a closed meeting under an exception to the Act must be limited in scope to the cited exception authorizing the closed meeting. (5 ILCS 120/2 and 120/2a.)
- The taking of final action at any closed meeting is prohibited. (5 ILCS 120/2(e).)
- A public body must disclose to the public the substance of any final action which is being taken, whether that substance has been discussed in an open or a closed meeting. (5 ILCS 120/2(e).)

Most of the exceptions can be grouped under the following headings, but it is important to emphasize that not all matters or meetings that might fall under the scope of the general headings are exempt—only those within the scope of a specific exception.

Employment/Appointment Matters: Such as employment compensation or discipline, collective bargaining matters, hearing a complaint against an employee, deliberation of salary schedules, or filling vacancies in public office; or the recruitment, credentialing, discipline or formal peer review of physicians or other health care professionals for a hospital, or other institution providing medical care, that is operated by the public body.

Legal Matters: Including, but not limited to, deliberations of a quasi-adjudicative body to evaluate testimony presented in an open hearing; pending, probable or imminent litigation; hiring or terminating legal counsel; or conciliation of complaints of discrimination in the sale or rental of housing, when closed meetings are authorized by the law or ordinance prescribing fair housing practices and creating a commission or administrative agency for their enforcement.

Business Matters: Such as discussing the purchase or lease of real property for the use of the public body or the price for sale of property owned by the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired, the setting of a price for sale or lease of property owned by the public body, or the sale or purchase of securities, investments, or investment contracts.

Security/Criminal Matters: Such as security procedures and the use of personnel and equipment to respond to an actual, a threatened, or a reasonably potential danger to the safety of employees, students, staff or the public, or public property; informant sources, the hiring or assignment of undercover personnel or equipment, or ongoing, prior or future criminal investigations, when discussed by a public body with criminal investigatory responsibilities.

School Matters: Such as student disciplinary cases and the placement of individual students in special education programs.

Closed Meetings Specifically Authorized by Law: A meeting may be closed if a State statute expressly requires or authorizes it. For example, Section 24 of the Illinois Public Labor Relations Act (5 ILCS315/24) and Section 18 of the Illinois Educational Labor Relations Act (115 ILCS 5/18) provide that the Open Meetings Act “shall not apply to collective bargaining negotiations and grievance arbitration[s] conducted pursuant to” those Acts.

2. TAPING AND FILMING

The Open Meetings Act provides that “any person may record the proceedings at meetings required to be open by this Act by tape, film or other means.” (5 ILCS 120/2.05.)

In certain circumstances, however, taping or filming is subject to another Illinois statute which provides: “No witness shall be compelled to testify in any proceeding conducted by a court,

commission, administrative agency or other tribunal in this State if any portion of his or her testimony is to be broadcast or televised or if motion pictures are to be taken of him or her while he or she is testifying.” (735 ILCS 5/8-701.)

Under Section 2.05 of the Act, if a witness before a “commission, administrative agency or other tribunal” refuses to testify because his or her testimony will be taped or filmed, “the authority holding the meeting shall prohibit such recording during the testimony of the witness.” (5 ILCS 120/2.05.)

That Section also provides that “[t]he authority holding the meeting shall prescribe reasonable rules to govern the right to make... recordings.” The Attorney General recommends that rules be written and published after appropriate public notice and deliberation.

a. Recording of Closed Meetings

For closed meetings only, public bodies are required to keep a verbatim record of all their closed meetings in the form of an audio or video recording. (5 ILCS 120/2.06)

The requirement to record all closed meetings applies to all public bodies that are subject to the Open Meetings Act. Recordings are confidential unless the public body or a court determines otherwise.

The verbatim recording of a closed meeting shall not be open for public inspection or subject to discovery unless:

- The public body determines that the recording no longer requires confidential treatment or otherwise consents to disclosure.
- A court in a civil proceeding, after an in camera examination, determines that the meeting was unlawful and that all or portions of the recording must be made publicly available.
- A court in a criminal proceeding, after an in camera examination, determines that certain portions of the recording should be made available to the parties for use as evidence in the prosecution.

Each recording of a closed meeting must be kept a minimum of 18 months. Although recordings may be destroyed after 18 months without the permission of the appropriate records commission, no recording may be destroyed unless the public body (1) approves destruction of the particular recording and (2) approves minutes (meeting the requirements stated below) of the closed meeting.

3. PROCEDURES FOR CLOSING MEETINGS

Section 2a of the Act sets forth the procedures for closing a meeting. (5 ILCS 120/2a.) Under that section, a public body may, upon a majority vote of a quorum present, vote to close a

meeting or to hold a closed meeting at a specified future date. The vote must be taken at an open meeting.

Additional notice is not required prior to holding a closed meeting when such meeting is part of an open meeting for which proper notice has been given. Separate notice is required, however, for all other closed meetings.

Section 2a requires that the vote of each member on the question of holding a closed meeting, as well as a citation to the exception in section 2(c) authorizing the closed meeting, be publicly disclosed at the time of the vote and recorded and entered in the minutes of the meeting at which the vote is taken.

The public statement and citation should recite the language of the exception. Discussion in a closed meeting is limited to matters covered by the exception specified in the vote to close.

Section 2a authorizes the closing of a series of meetings by a single vote as long as each meeting in the series involves the same particular matter and is scheduled to be held within three months of the vote. Subsequent meetings, however, would be subject to the notice requirements of section 2.02.

4. MINUTES

Section 2.06 requires a public body to keep minutes of all meetings, whether open or closed. Minutes must include, but need not be limited to: (i) the date, time and place of the meeting; (ii) the members of the body recorded as present or absent and if they were present physically or by video or audio; and (iii) a summary of discussion on all matters proposed, deliberated or decided, and a record of any votes taken. (5 ILCS 120/2.06.)

Section 2.06(b) requires that minutes of open meetings be approved within 30 days and be made available for public inspection within ten days of approval by the public body. If a public body has a website maintained by a full time staff, minutes should be provided there within ten days as well and remain posted on the website for at least 60 days. Minutes of closed meetings are available only after a determination by the public body that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential, or by court order pursuant to the provisions of 5 ILCS 120/3(c), when it is determined that the meeting to which such minutes pertain was closed in violation of the Act.

A closed meeting may be held to approve the minutes of a prior closed meeting. (5 ILCS 120/2(c) (21) and ILCS 120/2.06(d).) Public bodies are required to review closed meeting minutes at least twice a year to determine whether a need for confidentiality exists with respect to all or part of the minutes. A closed meeting may be held to conduct the mandated review, but determinations on such minutes are to be reported in open session. (5 ILCS 120/2(c)(21).) Minutes of closed meetings are exempt from inspection under the Freedom of Information Act (5 ILCS 140/7(m)) “until the public body makes the minutes available to the public.”

5. PUBLIC NOTICE OF TIME AND PLACE

The Act requires public bodies to give public notice at the beginning of each calendar or fiscal year of the dates, times, and places of their regular meetings to be held during the year. (5 ILCS 120/2.02(a).)

The posting of an agenda for each regular meeting at least 48 continuous hours in advance of the meeting is also required. (5 ILCS 120/2.02(a).) The regular meeting agenda “shall be posted at the principal office of the public body and at the location where the meeting is to be held.” If a public body has a website maintained by a full time staff, agendas and other required notices should be provided there until the regular meeting is concluded.

Since discussion of items of new business is allowed at regular meetings, consideration of such items is appropriate even if they are not included in the agenda. However: an appellate court has held that “consideration of” an item of new business not included on the agenda for the meeting is limited to deliberation and discussion and *does not include the taking of action on such item*.

Public notice of any special, rescheduled or reconvened meeting must be given at least 48 hours in advance except that public notice is not necessary for a meeting to be reconvened within 24 hours or if the time and place of the reconvened meeting was announced at the original meeting and there is no change in the agenda.

Notice of a meeting held in the event of a bona fide emergency need not be given 48 hours prior to such meeting. Notice in such a circumstance shall, however, be given as soon as practicable, and in any event prior to the holding of such meeting, to any news medium that has filed an annual request for notice under the Act. An agenda must be included in the notice for any special, rescheduled or reconvened meeting.

The Act requires that notice be given in two ways:

- (i) By posting a notice at the public body’s principal office or, if it has no office, at the building in which the meeting will be held. If a public body has a website maintained by a full time staff, notice should be provided there as well, even though the failure to do so will not invalidate any actions taken at a meeting.
- (ii) By sending a notice to each news medium that has filed an annual request for notice. Such news media providing a local address or telephone number for notice are entitled to notice of special, emergency, rescheduled or reconvened meetings given in the same manner as it is given to members of the public body. (5 ILCS 120/2.02(b).)

In addition, the schedule of regular meetings must be “available,” presumably at the office of the public body. This schedule must list the times and places of regular meetings. (5 ILCS 120/2.03.)

If a change is made in regular meeting dates, notice of the change must be given at least 10 days in advance by posting a notice at the public body’s office or at the place of meeting and sending a notice to each news medium that filed an annual request to receive such notice. Also, notice of

the change must be published “in a newspaper of general circulation in the area.” (5 ILCS 120/2.03.) *[Note: The Attorney General has stated that this requirement appears to relate to a permanent change in the regular meeting schedule and not to the rescheduling of a single meeting, which may be done with 48 hours notice.]*

Public meetings must be held at times and places convenient and open to the public. A public meeting may not be held on a legal holiday “unless the regular meeting day falls on that holiday.” (5 ILCS 120/2.01.)

6. DUTY TO POST BENEFITS INFORMATION

If an employee’s total compensation package exceeds \$75,000 per year, any employer participating in the Illinois Municipal Retirement Fund must post the employee’s total compensation package on its website within six business days after an employer approves its budget. A total compensation package means payment by the employer to the employee for salary, health insurance, a housing allowance, a vehicle allowance, a clothing allowance, bonuses, loans, vacation days granted, and sick days granted. If the employer doesn’t have a website or prefers not to post the compensation package on its website, it must post a physical copy of this information at the principal office of the employer. If an employer with a website chooses to post this information in hardcopy, the employer must denote on its website where this information is physically available.

If an employee’s total compensation package exceeds \$150,000 per year, any employer participating in the Illinois Municipal Retirement Fund must post the employee’s total compensation package on its website at least six days before this compensation package is approved by the employer. If the employer doesn’t have a website or prefers not to post this on its website, it must post a physical copy of this information at the principal office of the employer. If an employer with a website chooses to post this information in hardcopy, the employer must denote on its website where this information is physically available.

7. ENFORCEMENT

The Open Meetings Act provides for both civil and criminal enforcement.

a. Civil Enforcement: Section 3 (5 ILCS 120/3)

Subsection 3(a) authorizes any person, including the State’s Attorney of the county in which noncompliance may occur, to bring a civil action for the enforcement of the Act within 60 days after a meeting is alleged to have been held in violation of the Act, or, if facts concerning the meeting are not discovered within that period, within 60 days of the discovery of a violation by the appropriate State’s Attorney. The provision clearly authorizes members of the general public to institute enforcement proceedings under the Act.

The time limitation on civil actions in Section 3 was placed in the Act as an adjunct to the language in Subsection 3(c), which authorizes a court to declare null and void any final action taken at a closed meeting in violation of the Act. This was to remove the cloud of voidability

from certain actions, such as authorizations for issuance of bonds, as quickly as practicable, in order to prevent undue hardship and certification delays.

Subsection 3(b) authorizes a court, in addition to taking other evidence, to examine in camera any portion of the minutes of a meeting at which a violation of the Act is alleged to have occurred. Additionally, under Subsection 3(c), the court may grant such relief as it deems appropriate including: (1) issuing a writ of mandamus requiring that a meeting be open to the public; (2) granting an injunction against future violations of the Act; (3) ordering the public body to make available for public inspection the minutes of an improperly closed meeting; and (4) declaring null and void any final action taken at a closed meeting in violation of the Act. Item 4 above is a significant provision since it makes certain actions taken in violation of the Act voidable.

A court, however, is not required to void an action when the voiding of the action is not in the public interest. It should also be noted that the voidability provision relates only to final actions taken in closed meetings held in violation of the Act. Courts normally do not void actions because of a technical notice violation, but a court has voided *action* taken on an item of new business that was not included in the agenda.

Subsection 3(d) authorizes the court to assess against any party, except a State's Attorney, reasonable attorney's fees and costs incurred by any other party who substantially prevails in an action brought in accordance with Section 3. Assessment of fees against a private party, however, calls for an additional determination that the action brought by such party was "frivolous or malicious" in nature.

b. Public Access Counselor: Section 3.5 (5 ILCS 120/3.5)

A person who believes a violation of the Open Meetings Act has occurred may file a request for review with the Public Access Counselor in the Office of the Illinois Attorney General within 60 days of the alleged violation. If the Public Access Counselor believes that further action is warranted, the counselor will forward the request to the public body and request documents from the public body, which must be provided within seven working days. These records cannot be disclosed by the Public Access Counselor to the public, including the requestor.

Also, within seven working days of having received this request for review, the public body may, but is not required to, furnish the Public Access Counselor with a response to the allegations in the form of a letter, brief, or memorandum. Furthermore, the public body may furnish the Public Access Counselor with affidavits and any additional records concerning any matter germane to the review. If the public body fails to furnish specified records, or if otherwise necessary, the Attorney General may issue a subpoena to any person or public body having knowledge of or records pertaining to an alleged violation of the Act. The Public Access Counselor may issue a binding opinion unless a civil action has been filed in court under Section 3.

The Attorney General may also issue advisory opinions about the Open Meetings Act at the request of the head of the public body or its attorney. A public body that relies in good faith on an advisory opinion of the Attorney General is not liable for penalties under this Act, so long as

the facts upon which the opinion is based have been fully and fairly disclosed by the public body to the Public Access Counselor.

c. Criminal Enforcement: Section 4 (5 ILCS 120/4)

In addition to civil penalties, violators of the Open Meetings Act are subject to criminal penalties. Any criminal action must, of course, be initiated by a State's Attorney. Violation of the Act is a Class C misdemeanor (5 ILCS 120/4), which is punishable by a fine of up to \$1,500 and imprisonment for up to 30 days. (730 ILCS 5/5-4.5-65.)

**B. PUBLIC OFFICER PROHIBITED ACTIVITIES ACT
(50 ILCS 105/) & PROHIBITED INTERESTS IN
MUNICIPAL CONTRACTS (65 ILCS 5/3.1-55-10)**

1. PROHIBITED INTERESTS IN CONTRACTS

There are two similar Acts that prohibit certain conflicts of interest relating to public contracts:

- (i) No person holding any office, either by election or appointment under the laws or Constitution of this State, may be in any manner financially interested directly in his or her own name or indirectly in the name of any other person, association, trust, or corporation, in any contract or the performance of any work in the making or letting of which such officer may be called upon to act or vote. No such officer may represent, either as agent or otherwise, any person, association, trust, or corporation, with respect to any application or bid for any contract or work in regard to which such officer may be called upon to vote. (50 ILCS 105/3.)

- (ii) A municipal officer shall not be financially interested directly in the officer's own name or indirectly in the name of any other person, association, trust, or corporation, in any contract, work, or business of the municipality or in the sale of any article whenever the expense, price, or consideration of the contract, work, business, or sale is paid either from the treasury or by an assessment levied by statute or ordinance. In addition, a municipal officer shall not be interested, directly or indirectly, in the purchase of any property that (i) belongs to the municipality, (ii) is sold for taxes or assessments, or (iii) is sold by virtue of legal process at the suit of the municipality. This provision does not prohibit any person serving on a municipal advisory panel or commission or non-governing board or commission from having an interest in a contract, work, or business of the municipality unless the municipal officer's duties include evaluating, recommending, approving, or voting to recommend or approve the contract, work, or business. (65 ILCS 5/3.1 55 10(a).)

Taken together, these Acts, among other things, generally prohibit:

(1) officers of State-created boards or commissions from being financially interested in contracts the making of which they may be called upon to vote; (2) municipal officers (other than members of advisory or other non-governing boards or commissions) from being financially interested in any municipal contracts; and (3) members of advisory or other non-governing boards or commissions from being financially interested in any contract where the members' duties include evaluating or making recommendations or approving the contract in which the members have an interest.

Please note: A violation of either Act is punishable as a Class 4 felony and by forfeiture of office. You should obtain legal advice whenever there is any question as to applicability of either of the Acts.

2. WHAT DOES IT MEAN TO BE “FINANCIALLY INTERESTED”?

The prohibited interest may be direct or may be indirect in the name of another person or entity. This does not necessarily prohibit the interest of a spouse or other relative, unless it is found to be a subterfuge.

3. ARE THERE EXCEPTIONS?

The Acts provide the following exceptions:

a. Blanket Exceptions

The Acts do not apply in the following three circumstances:

- (i) Advisory bodies; or (unless a State-created Board that votes upon contracts) any other non-governing body. However, the exemption in 65 ILCS 5/3.1 55 10 does not apply to board and commission members whose duties include evaluating, recommending, approving, or voting to recommend or approve the City funded contract, work, or business. (50 ILCS 105/3(a), 65 ILCS 5/3.1 55 10(a).)
- (ii) Where the officer owns no more than a 7½% interest in the entity awarded the contract; and the entity is a public utility and the contract is for regulated utility services. (50 ILCS 105/3(c), 65 ILCS 5/3.1 55 10(d).)
- (iii) Where the officer owns, through a mutual fund only, a 1% interest or less in the entity awarded the contract; and the company is publicly traded in a nationally recognized securities market. (50 ILCS 105/3(e), 65 ILCS 5/3.1 55 10(a).)

b. Exceptions by Recusal

When the recusal requirements described below are met, the Acts will not apply in the following circumstances:

- (i) Where the officer owns less than a 7½% interest in the entity awarded the contract; and if the contract is for over \$1,500, it is awarded to the lowest responsible bidder after opening sealed bids; and the award of the contract would not cause the amount the entity receives from the public body in the fiscal year from all contracts to exceed \$25,000. (50 ILCS 105/3(b) (1), 65 ILCS 5/3.1 55 10(b) (1).)
- (ii) Where the amount of the contract does not exceed \$2,000; and the award of the contract would not cause the amount that the entity receives from the public body in the fiscal year from all contracts to exceed \$4,000. (50 ILCS 105/3(b) (2), 65 ILCS 5/3.1 55 10(b) (2).)
- (iii) Where the officer owns less than a 1% interest in the entity awarded the contract. (50 ILCS 105/3(b-5), 65 ILCS 5/3.1 55 10(b-5).)
- (iv) Where the officer is an employee of the entity awarded the contract, or owns in his or her own name a 1% interest or less in the entity awarded the contract, or both; and the company is publicly traded in a national stock market; and the officer publicly

discloses the interest prior to (but not during) deliberations on the contract. (50 ILCS 105/3(e), 65 ILCS 5/3.1 55 10(a).)

- (v) Where the contract is for a deposit of funds in a local bank; and the officer owns less than a 7½ % interest in the entity awarded the contract. (50 ILCS 105/3.2), 65 ILCS 5/3.1 55 10(e).)

The above exceptions apply only when these recusal requirements are met:

- (i) The officer publicly discloses the nature and extent of interest prior to or during deliberations on the contract; and
- (ii) the officer abstains from voting on the contract (he or she will be considered present for purposes of determining a quorum); and
- (iii) the contract is awarded by a majority vote of the members of the public body then in office.

It is the City's recusal policy that the disclosure described in (i) above must be made orally on the record or in writing prior to deliberations on the matter. An oral or written disclosure of the existence of a potential conflict of interest will be entered into the minutes of the public body for the meeting in which the deliberations were made. It is also the policy of the City that, when recusal is required under these Acts, the member must remove himself or herself from the room in which deliberations are taking place during the entire time of deliberations on the matter and while the vote on the matter is being taken.

Unless one of the three blanket or five recusal exceptions applies, a member of a public body cannot avoid the Acts by abstaining from voting.

c. Exceptions for Not-for-Profit Corporations

Beginning January 1, 2010, neither Act will prohibit a City officer from serving on the board of a not-for-profit corporation subject to the following:

- (i) Where the City officer is appointed by the City Council to represent the interests of the City on the not-for-profit corporation's board, then the City officer may actively vote on matters involving either that board or the City, at any time, so long as the membership on the not-for-profit board is not a paid position, except that the City officer may be reimbursed by the not-for-profit board for expenses incurred as the result of membership on the not-for-profit board.
- (ii) Where the City officer is not appointed by the City Council to the governing body of not-for-profit corporation, then the City officer may continue to serve; however, the City officer must abstain from voting on any proposition before a municipal governing body directly involving the not-for-profit corporation and, for those matters, shall not be counted as present for the purposes of a quorum of the governing body. (See 50 ILCS 105/3(f), 65 ILCS 5/3.1-55-10(g).)

**C. LOBBYIST REGISTRATION ACT
(25 ILCS 170)**

A state registered lobbyist, his or her spouse, and his or her immediate family members living with said state registered lobbyist may not serve on a board, commission, authority, or task force authorized or created by State law or by executive order of the Governor. This restriction does not apply if:

- (i) A registered lobbyist, his or her spouse, or immediate family member living with said registered lobbyist, is serving in an elective public office (elected or appointed to fill a vacancy); and
- (ii) A registered lobbyist, his or her spouse, or immediate family member living with said registered lobbyist, is serving on a State advisory body that makes nonbinding recommendations to an agency of State government but doesn't make binding recommendations or determinations or take any other substantive action. (25 ILCS 170/3.1.)

APPENDIX: RESOURCES

Chicago Board of Ethics

740 North Sedgwick Street, Suite 500
Chicago, Illinois 60610
Telephone: (312) 744-9660
TTY: (312) 744-5996
<http://www.cityofchicago.org/Ethics/>

Chicago Department of Law

City Hall
121 North LaSalle Street, Room 600
Chicago, Illinois 60602
Telephone: (312) 744-6900
TTY: (312) 744-2963
<http://www.cityofchicago.org/Law/>

Illinois Attorney General

Chicago Main Office
100 West Randolph Street, 12th Floor
Chicago, Illinois 60601
Telephone: (312) 814-3000
TTY: (312) 814-3374
<http://www.ag.state.il.us/>

Illinois Compiled Statutes

<http://www.ilga.gov/legislation/ilcs/ilcs.asp>

City of Chicago Ethics Ordinance

<http://www.cityofchicago.org/content/dam/city/depts/ethics/general/Ordinances/GEO-July2013.pdf>

Ethics and Open Meetings Act Online Training Program Website

Educational brochures are available on the Board of Ethics' website, but the programs for ethics training are password protected, and the links will be sent to City appointed officials directly by the Board of Ethics.

NOTES