



BOARD OF ETHICS  
CITY OF CHICAGO

REVISED

January 25, 2018

Joseph M. Ferguson  
Office of Inspector General  
740 North Sedgwick, Suite 200  
Chicago, IL 60654

**Re: Comments from the Board of Ethics on the Draft OIG Rules dated January 5, 2018**

Dear Inspector General Ferguson:

On behalf of the Board of Ethics, I hereby submit comments to your office's Draft Rules, which were posted on your agency's website as of January 5, 2018. We appreciate the opportunity to comment. In the interest of transparency and enabling potential future commentators to amplify or disagree with any of our comments, we will post this document on our agency's website.

Section 11.1.C.5: The Board of Ethics agrees that §2-56-070(e) requires that the SRI must disclose to the Board the identity of any informant, complainant, witness or person investigated. The Board shall maintain the confidentiality of all such information, pursuant to §2-156-400 of the Municipal Code. However, we point out that SRIs submitted to the Board in the following cases did not disclose this information: OIG case numbers 10-0922 and 14-0338 (corresponding to Board case nos. 141284.IG and 151695.IG, respectively). The SRIs in those cases did not state that the complaints were anonymous, or that the complainant had requested that his or her name not be used in the SRI or your office's response to any such request.

Section 11.2.B: The Board recognizes that the OIG has the authority, pursuant to §2-56-050(b)(1)(ii), to refer an ethics complaint to the appropriate authority if he determines that the potential violation is minor and can be resolved internally as a personnel matter. However, we point out that, pursuant to §2-156-070(b) of the Municipal Code, the Board of Ethics has the authority to determine whether the conduct of a person who seeks the Board's opinion regarding past or ongoing conduct (~~either the person's own, or the conduct of another person~~) involves a minor violation of the Governmental Ethics Ordinance (chapter 2-156 of the Municipal Code). The Board has, as required by that section, promulgated Rule 3-11 (released after review by your office, among others). That Rule governs the Board's actions in these circumstances, setting forth the standard the Board applies to determine whether the requestor's own past or ongoing conduct involves a violation that is minor in nature, as whether:

“(i) the Board would still be upholding the spirit of the [Governmental Ethics] Ordinance; (ii) ... a reasonable person familiar with all the facts would consider the violation technical and not substantive in nature and extent; and (iii) ... the violation is of part of a pattern with respect to the person whose conduct is described in the request.”

In part to assist the OIG in making its own determination as to whether conduct complained of is minor, and in part to educate persons subject to the Ordinance and others, the Board posts on its website the text

(redacted, per Board Rule 3-10) of all letters of admonition issued in cases where it determines that conduct constituted a minor violation. *See:*

[https://www.cityofchicago.org/city/en/depts/ethics/supp\\_info/ao - apptoffi1.html](https://www.cityofchicago.org/city/en/depts/ethics/supp_info/ao - apptoffi1.html)

We respectfully request that, to foster consistency in the administration of chapter 2-156 between our agencies, and enable our agency to advise City personnel and others subject to the Governmental Ethics Ordinance as completely as possible, your office: (i) request a confidential advisory opinion of the Board prior to determining whether any conduct complained of actually would constitute a minor violation if the allegations were sustained; and (ii) provide our office with a written summary of all complaints in which it has determined that conduct complained of constituted a minor violation, and of actions taken by the appropriate authority to whom the OIG referred the matter.

Rule 11.8.I: We respectfully suggest that, to avoid confusion and underscore that the OIG does not have authority to “determine [that] there has been a violation of the Ethics Ordinance,” this subsection be re-worded as follows, to accurately reflect §2-56-050(b):

“After the OIG determines that the evidence adduced in its investigation warrants a probable cause finding by the Board of Ethics in accordance with Section 2-156-385 of the MCC, it must comply with the notice requirements to the subject provided by the Ethics Ordinance before seeking a probable cause finding by the Board of Ethics.”

Rule 11.10: We have two (2) comments:

(i) We respectfully suggest that the first sentence be re-worded as follows, to accurately reflect §2-156-445(a) of the Governmental Ethics Ordinance:

“The MCC bans persons who are doing or who have done business with the City, lobbyists, and persons seeking to do business with the City (among others) from contributing more than \$1,500 per calendar year to the political campaign of any City official or candidate for City office.”

The word “vendors” is imprecise, potentially misleading, and covers persons who do not “do business with the City” (as defined in the Governmental Ethics Ordinance) or other named sister agencies, and thus would not be subject to the \$1,500 contribution limitations; and

(ii) The Rule as drafted references Executive Order 2011-4 and could be read to imply that potential violations of it (or other Executive Orders) could be cured by returning the excess campaign contribution. That cure, set out in §2-156-445(d) of the Governmental Ethics Ordinance, does not on its face apply to apparent violations of the Executive Orders. It would be of great assistance to our office, and, among others, to campaign contributors to Mayor Emanuel or his official candidate committee, as well as to the staff of his official candidate committee, if your office could clarify the legal authority for applying this “cure” to violations of the Executive Order(s), or, in the alternative, clarify that this cure applies only to apparent violations of the Governmental Ethics Ordinance.

We look forward to continuing the discussion on these points with your office prior to adoption of the Draft Rules.

Yours very truly,



Steven I. Berlin, Executive Director