

BOARD OF ETHICS

Open Session Minutes

MAY 11, 2020, 3:04 P.M.

740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Nancy C. Andrade
Dr. Stephanie Cox-Batson
David L. Daskal
Dr. Daisy S. Lezama
Hon. Barbara McDonald

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard Superfine, Legal Counsel
Ana Collazo, Attorney/Investigator
Edward Primer, Program Director
Pully Casillas, Staff Assistant

GUESTS ATTENDING

Heather Cherone, The Daily Line

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

I. APPROVAL OF MINUTES

The Board VOTED 7-0 to approve the open session minutes of the Board's meeting of February 10, 2020.

II. CHAIR'S REPORT

The Chair expressed his thanks to the entire staff for the work it is doing during the Covid-19 crisis.

III. MEMBERS' REPORT

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Staffing during the Covid-19 Pandemic

While I am taking advantage of the fact that I live but a 5-minute walk to the office and come into the office every day, all other staff have been working remotely since March 23 and I would like to thank them. Periodically, like today, various staff members come to the office to complete tasks. Jef Johnson, our office's PIO, has worked at the Joint Information Center at Emergency Communications HQ on West Madison Street. Ed Primer and Ana Collazo are our "Signal Officer Corps" for today's meeting, but every staff member has come in to the office at various times to complete work tasks.

B. Amendments to the Ordinance

1. On December 18, the City Council voted into law several amendments to the Governmental Ethics Ordinance, which this Board played a role in drafting. These took effect on April 14, 2020, and:

- Prohibit City elected officials and employees from acting as lobbyists on behalf of private clients before any other government unit in the State, or from receiving compensation or income from such lobbying by others.
- Require City employees and officials who file annual Statements of Financial Interests with the Board of Ethics to disclose on those forms the names of relatives who are registered as lobbyists not only with the City (which is current law), but also with the Secretary of State, or with the Cook County Clerk, or with any other local unit of government in Illinois.
- Prohibit elected officials of any other unit of government within the State of Illinois from lobbying the City of Chicago or any of its officials, employees, agencies, departments, boards or commissions. **Note:** as was reported in the Tribune, on April 22, an amendment was submitted to the City Council that would effectively relax this prohibition by limiting the prohibition on lobbying for private clients to elected officials from jurisdictions that have “pending or recurring legislative or contractual matters involving the City.” *See:* <https://chicago.legistar.com/LegislationDetail.aspx?ID=4424766&GUID=B022DC30-A23F-4E93-A035-468556C844A0&Options=Advanced&Search=>

I do not know whether the City Council’s Committee on Ethics and Government Oversight will hold hearings on this amendment.

- The proposed amendment does not prohibit or inhibit government officials or employees from lobbying on behalf of their constituents, or from performing their official governmental public responsibilities (activity that could be considered “lobbying” in some jurisdictions), nor impinge on the practice of law by legislator-attorneys.
2. As has now been widely publicized, implementation of the non-profit lobbying provisions (also passed on July 24, 2019) was delayed to July 1, 2020. Just before the Covid-19 crisis began, we were working diligently with representatives from the Mayor’s Office and non-profit community on potential amendments. In Executive Session, I will discuss possible amendments that should be introduced later in 2020. And, we have another advisory opinion with 15 hypotheticals on today’s agenda. We will continue diligently to issue advisory opinions as questions arise.
3. On February 13, I testified before the City Council’s Committee on Ethics and Government Oversight on a substitute ordinance, which was then enacted into law by the City Council at its February meeting, to take effect on June 17, 2020. The ordinance amends §2-156-110(b) to prohibit any City employee or official who has contract management authority to have a financial interest in or derive any work-related compensation from any contractor, subcontractor or person who is otherwise a party to that contract. The Chair and staff first suggested this legislation to the Committee’s Chair in response to the stories about the SafeSpeed matter as reported in the media.

We have posted on our website a color-coded version of the Ordinance showing all changes made since January 2018.

C. Education

Classes and Other Presentations

Since the Board's last regularly scheduled meeting, 50 employees and officials attended classes conducted here on February 20 and March 5. Owing to the Covid-19 crisis, we cancelled all classes from March 17 on. We hope to resume them perhaps in June. We have extended all training deadlines accordingly. All Board classes cover sexual harassment.

On February 19, we met with representatives from various South Side nonprofits at a presentation hosted by MJ Design and Co. and discussed the non-profit lobbying law. 30 representatives from nonprofits attended.

On February 25, we presented our annual class to all new Special Service Area ("SSA") Commissioners at the request of the Department of Planning & Development. 157 persons attended, both SSA Commissioners and representatives from SSA service providers.

On-line Training

For appointed officials

To date, 265 appointed officials have completed the new annual training for appointed officials. This represents only about 50% of the total. They have until June 1 to complete it, though we will likely extend that deadline. We are grateful for the assistance of the Mayor's Office of Intergovernmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 31,401 employees and 25 aldermen have completed the program. 44 more are in progress. This represents 99.2% of the total required to complete the training before June 1, 2020. We are in contact with training administrators from all departments with employees who haven't completed the training, and with those aldermen who haven't yet.

D. Council on Governmental Ethics Laws ("COGEL")

As the President of COGEL, I chaired a meeting of the Steering Committee last week and we considered the painful but necessary decision to cancel the December 2020 in-person annual conference in Atlanta, and instead offer a streamlined virtual conference free of charge to more than 600 COGEL members.

E. Sister Agency Ethics Officers

We postponed our quarterly meeting of 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, the Cook County Assessor's Office, and Chicago Housing Authority.

F. 2020 Statement of Financial Interests

On February 28, notices to 3,616 City employees and officials were sent via email and U.S. first class mail advising them of the requirement to file 2020 Statements of Financial Interests before May 1. This included individuals identified by each Ward or alderman who fall into the definition in the Ordinance of “City Council employee” even though they are paid as independent contractors. Due to the Covid-19 crisis we extended that deadline to June 1 and may again extend it.

To date, 2,748 have filed, leaving us at 76% compliance.

Forms are posted on our website as soon as they are processed by staff – our goal is to have all filed forms posted within 24 hours of when they are filed. Once posted, they reside on the Board’s website for seven (7) years from the date of filing, after which they are removed and destroyed, pursuant to the Board’s Document Retention Schedule kept with the Illinois Secretary of State and Local Records Commission of Cook County.

G. Advisory Opinions

Since the Board’s last meeting on February 10, we have issued 626 informal advisory opinions – there are two (2) formal opinions on today’s agenda as well. The leading categories were, in descending order: Lobbying; Gifts; Statements of Financial Interests; City Property; Post-Employment; Political Activity; and Outside Employment. Unsurprisingly, travel inquiries dropped off completely after about March 18, though I am pleased that today, we issued our first informal opinion approving travel since that date, to a Chicago Police Department Officer in the Bomb Squad, for training offered by the Federal Government.

The leading City departments from which requesters came in this period were (in descending order): City Council; Mayor’s Office; Chicago Police Department; Chicago Fire Department; Department of Procurement Services; Department of Aviation; Department of Law; Department of Transportation; and Department of Buildings.

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.

H. Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions

Every formal Board opinion issued since 1986 is posted on the Board’s website (more than 908), redacted in accordance with the Ordinance’s confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. Further, summaries and keywords for each of these opinions are available on the Board’s searchable index of opinions. Only a handful of other ethics agencies have comparable research tools.

We are unaware of jurisdictions that make their *informal* opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement.

I. Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted four (4). By law, we make all granted waivers public on our website. Three (3) more requests are on today's agenda: two (2) of these were granted on an emergency basis due to the Covid-19 crisis. The third will be discussed in Executive Session and then made public if granted, along with the two (2) already granted.

J. Summary Index of Board-Initiated Regulatory Actions/Adjudications/pre-2013 Investigations

We post the summary index of all investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board undertook without an IG investigation.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There have been, to date, 125 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 53 such matters.

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

We post and continually update, on our website, an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (a total of eleven since July 1, 2013, the last two (2) of which are on today's agenda, one for a finding of probable cause, the other for a status report concerning potential settlement) 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.

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

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

If the subject is unable to rebut the Board's *prima facie* probable cause finding, the Board may enter into a settlement agreement – all settlement agreements are made public – or the Board or subject may decide to proceed to a 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 his or her attorney. At the conclusion of the hearing, the ALJ submits his or her findings of fact and law to the Board, which can accept or reject them, based solely on the written record of the hearing. The Board will then issue a public opinion in which it finds one or more violations of the Ethics Ordinance (or finds none) and impose appropriate fines.

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

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

On today's agenda is an IG case, pending since October 2019, for a status report on potential settlement. That case involves potential violations of the Ordinance's post-employment, prohibited conduct, confidential information, and conflicts of interest provisions. Also on the agenda is a matter involving false or misleading Statements of Financial Interests, referred to the Board by the IG for a finding of probable cause.

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.

L. 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.

Since the time this provision (§2-156-070(b)) became effective on July 1, 2013, the Board has advised three (3) aldermen, two (2) aldermanic staffers, one (1) mid-level City employee in an operating department, one (1) department head and one (1) former department head that their past conduct violated the Ordinance. In three (3) of these cases, one (1) involving an alderman, the second an aldermanic staffer, and the third a former department head, the Board concluded that the apparent violations were not minor or technical, and the aldermen and aldermanic staff self-reported to the former LIG, and the former department head self-reported to the IG. Since the time that all matters involving the former LIG were consolidated with the IG, the IG has informed us that it has no record that the LIG ever commenced an investigation in the matter involving the alderman, and that the matter involving the aldermanic staff was closed, apparently without further investigation by the LIG.

In the three (3) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance.

On today's agenda is a ninth matter, in which staff has recommended that the Board determine that an employee committed a minor violation by forwarding, from his cityofchicago.org account, an email he did not recognize as advertising for a political fundraiser.

M. City Council Handbook

The project of completing a handbook for the operations of aldermanic offices has been resurrected. We updated the content for which we are responsible and submitted it this week. We do not know when the final product will be released, or which aldermen will shepherd it. Previously, the role of shepherding this work fell with former 40th Ward Alderman Patrick O'Connor.

N. Lobbyists-Regulation and Enforcement

To date for 2020, there are 800 registered lobbyists, and we have collected \$367,375 in lobbying registration fees. The deadline for lobbyists to re-register or terminate was by the close of business on Tuesday, January 21. On Friday, February 7, the date on which the Board could begin to assess fines of \$1,000/day until filing or termination, we determined that 25 lobbyists had violated the Ordinance and made their names public on our website. Nine (9) of them failed to file before the fine period began: eight (8) were fined \$1,000 and one (1) was fined \$2,000. All of these fines were paid. As to 4th Quarter activity reports filings, which were also due by the close of business on January 21, five (5) filed late, and were found in violation of the Ordinance, and their names published on our website. Three (3) of them filed before the fine period began, but two (2) were fined \$1,000/day, which fines have not been paid.

Note that we discovered a glitch in the ELF (Electronic Lobbyist Filing) system in November 2019 whereby the compensation reported by lobbyists for the second, third and fourth quarter was combined with compensation reported in previous quarters, and then posted erroneously into the public interface of the program, which is on a SOCRATA platform. I'm pleased to report that programmers at the Department of Assets and Information and their contractors at Electronic Knowledge Interchange fixed this problem and we announced the fix publicly on March 2, 2020.

O. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received five (5) new requests for information under the FOIA.

The First was a request for Chicago Police Department contract documentation with a City contractor. We responded that we do not maintain such information.

The second was from a former employee for records about himself. We responded that we do not maintain such information.

The third was for records about postage meter information. We responded that we do not maintain such information.

The fourth was a request for records about a contract for postage equipment. We responded that we do not maintain such information.

The fifth was a request for records about a contract for postage equipment for the Zoning Board of Appeals. We responded that we do not maintain such information.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

1. Discussion of the lobbying law amendments to the Governmental Ethics Ordinance and to Board Rule 6 of the Board's Rules and Regulations

The Executive reported on two (2) legislative matters that are still pending: (i) an amendment introduced at the last City Council meeting that would "relax" the ban on elected officials lobbying on behalf of private clients so that it would apply only to those elected by government entities [like the State or County] that have contractual or legislative matters pending with the City. It has been assigned to Committee.

2. As to the status of amendments to the non-profit lobbying laws, there is a working draft, which may be introduced in September. The current thinking is that it would become effective on January 1, 2021, and: (i) add an activity and compensation threshold for any calendar quarter –only if one exceeds both prongs one must register, and this would apply also to for-profit lobbyists; (ii) adds more disclosures lobbyists must report on their quarterly reports; (iii) enables the Board to waive lobbying fees for both 501c3's and c4's; (iv) clarifies what constitutes "administrative action"; (v) provides that were the Board to find a non-profit lobbyist in violation of the law, the liability is imposed on both the lobbyist and their employer jointly and severally, so that the Board could expect that the organization pay the fees; and (vi) last, would cap all lobbyist fines at \$10,000 for any single violation.

VII. NEW BUSINESS

None

At 3:15 p.m., the Board VOTED 7-0 to adjourn into Executive Session under: (i) 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act; (ii) 5 ILCS 120/2(c)(4) to hear and discuss evidence or testimony in closed hearing as specifically authorized pursuant to Governmental Ethics Ordinance Sections 2-156-385 and -392, and the Board's Rules and Regulations, as amended, effective January 5, 2017, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public

inspection a written decision setting forth its determinative reasoning; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

Members of the public were asked to leave the Executive Session of the meeting and advised they would be invited into the reconvened Open Session of the meeting.

At 5:25 the Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The public was invited into the Open Session of the meeting and joined at 5:26 p.m. At 5:26 p.m., member Nancy C. Andrade left the meeting. At 5:29 p.m., Dr. Stephanie Cox-Batson rejoined the meeting.

MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in executive session, VOTING 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, absent) in open session, to approve the executive session minutes of the February 10, 2020 meeting.

II. CASEWORK

A. Advisory Opinions

1. Case No. 20012.Q, Gifts to the City

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade, and Daisy S. Lezama, absent) to approve the opinion posted on the Board's website on March 17, 2020, detailing the procedures by which City employees, officials and departments can accept donations of medical supplies or services to deal with the Covid-19 crisis.

2. Case No. 20009.A, Lobbying

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade, and Daisy S. Lezama, absent) to approve the draft advisory opinion addressing 15 hypothetical questions posed to the Board on lobbying by representatives of non-profit organizations.

B. Requests for Waivers

3. Case No. 20014.W, Post-employment

The Board VOTED 3-1 (Stephanie Cox-Batson, dissenting; Zaid Abdul-Aleem, Nancy C. Andrade, and Daisy S. Lezama, absent) to approve the limited waiver from the Ordinance's post-employment provisions to Karen Tamley and direct the staff to make it public.

4. Case No. 20015.W, Prohibited Conduct

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade, and Daisy S. Lezama, absent) to approve the waiver from the Ordinance's "reverse revolving door" provisions to Lisa Timbo and direct the staff to make it public.

C. **Status Report on Matter after Board's Probable Cause Finding Based on a Completed Investigation by the Office of Inspector General Pursuant to §§2-156-385(1)-(3) of the Governmental Ethics Ordinance**

5. Case No. 19029.IG, Post-Employment, Confidential Information, Conflicts of Interest

The Chair stated that this matter would be continued.

D. **Consideration of Probable Cause Determination in Matter Referred by the Office of Inspector General In Response to Board's Request for Investigation.**

6. Case No. 20005.IG, Statement of Financial Interests

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade, and Daisy S. Lezama, absent) to determine there was probable cause to believe that, while still employed with the City, a now former City employee violated the Governmental Ethics Ordinance's Statements of Financial Interests provision, §2-156-160, *et seq.* The Board determined that the former employee knowingly failed to report income in excess of \$1,000 from a source other than the City in previous years.

E. **Dismissed and Referred Complaint Report**

7. Case No. 20007.C, Relatives, CPD-O'Hare

The Chair explained that this matter had been referred to the Office of Inspector General, which declined to investigate but instead sent a written advisement to the Department Head explaining the nepotism restrictions in the Ordinance. The Board requested and was granted the ability to work on the draft advisement.

8. Case Nos. 20010.C.1, C.2, Prohibited Political Activities

The Chair explained that these matters had been referred to the Chicago Police Department's Bureau of Internal Affairs.

H. **Finding of Minor Violation Based on a Self-Report by a City Employee**

9. Case No. 20008.C, Prohibited Political Activity

At 5:38 p.m., member Nancy C. Andrade rejoined the meeting.

The Board VOTED 5-0 (Zaid Abdul-Aleem and Daisy S. Lezama, absent) to determine that a City employee committed a minor violation of the Ordinance by mistakenly forwarding from his City email address an invitation to a birthday party for a State legislator, and then realizing

that the invitation was for a political fundraiser. The employee self-reported his violation to the Board. The Board also voted to send the employee a confidential letter of admonition.

I. Requests for Waivers *(continued)*

10. Case No. 20016.W, Post-employment

The Board VOTED 5-0 (Zaid Abdul-Aleem, and Daisy S. Lezama, absent) to disapprove the waiver from the Ordinance's post-employment provisions submitted on behalf of a former City employee.

III. OTHER BUSINESS

None

At 5:40 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to adjourn the meeting.