

BOARD OF ETHICS
OPEN SESSION MINUTES

May 27, 2015, 3:04 p.m.

740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

Stephen W. Beard, Chair
Russell F. Carlson
Mary T. Carr
Frances R. Grossman
Dr. Daisy S. Lezama

STAFF PRESENT

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

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Dr. Daisy S. Lezama joined the meeting at 3:18 p.m.) to approve the Open Session Minutes of the April 22, 2015 meeting, as amended.

II. CHAIR'S REPORT

None

III. EXECUTIVE DIRECTOR'S REPORT

A. Education-Classes

Staff continues to work with the Department of Innovation & Technology to replace the system for scheduling people for 4-year classes. A requirements document was submitted to DOIT in early May, and we are aiming to have the new system running by the end of 2015.

In the meantime, 16 employees and all 13 new aldermen attended classes on April 28, May 13 and May 14. There are 12 individuals scheduled for class on May 28.

On May 20, staff made a 60 minute presentation to 19 visiting government corruption officials from 13 countries in Africa, at the request of the Mayor's Office.

On June 4, The Executive Director will participate in a panel discussion regarding Ethics for Government Attorneys, together with representatives from the Attorney General's office, the Attorney Registration and Disciplinary Commission and the John Marshall Law School.

On June 5, staff will conduct a 90 minute class for the newly elected alderman of the 15th Ward, and his staff, and for the 48th Ward and staff on June 10, at their request.

Staff is in the process of scheduling several classes for all other City Council staff employees and independent contractors.

B. On-line Training

To date, 371 lobbyists have completed the 2014-2015 lobbyist program. Their deadline is June 30. Reminders will be sent on June 1 and June 15.

To date, 9,704 employees have completed the 2015 mandatory education program. Their deadline is December 31, 2015. Next week, staff will release a DVD version of the training to those departments that request it, to enable them to ensure that their employees without computer access complete the training by the deadline. The aldermanic version will be released by the end of June.

C. Ongoing Investigative Record

We continue to post on the Board's website the ongoing investigative record, showing the status of every completed investigative report brought to the Board by both inspectors general since January 1, 2012, and the status of every petition to commence an investigation brought by the Legislative Inspector General to the Board. The record is consistent with the confidentiality provisions of the Ordinance.

D. Lobbyists-Regulation and Enforcement

Currently, there are 572 lobbyists registered for 2015, and the agency has collected \$290,151 in lobbyists' registration fees. On or around April 23, we sent 45 notices via first class mail to all lobbyists who failed to file quarterly reports by the April 20 deadline, and then, on May 13, 2015, sent the 5 still non-compliant lobbyists, via first class and certified mail, a "due process letter," explaining that they are in violation of the Ordinance and subject to fines of \$1,000 per day until they file. To date, 1 lobbyist was found in violation of the Ordinance, and, therefore, \$1,000 per day fines continue to accrue. The fine will be referred to the Law Department for collection. (Such a referral only occurs after the lobbyist files his or her late document, this agency determines the actual monies owed based upon the filing date, we send a "demand letter" to the lobbyist for payment of that determined fine within a time certain and, in spite of our letter, the lobbyist does not pay within the time specified.)

E. Lobbyists—Inspector General Audit

The auditing personnel in the IG's office informed staff earlier today that they are nearing completion of their tentative audit report of the lobbyist registration system, and will be scheduling a meeting with us in the next few weeks to present their conclusions and afford the Board the opportunity to respond to them.

F. 2015 Statements of Financial Interests

To date, 2,900 employees and officials have filed their Statements of Financial Interests. Updated lists of filers were sent to departmental and aldermanic ethics liaisons on April 1 and 16 and May 18. The filing deadline is May 31.

G. Advisory Opinions

Since the April 2015 meeting, the agency has issued 451 confidential informal advisory opinions (in addition to those formal opinions issued or approved by the Board).

- The leading categories in this period (in descending order) were statements of financial interests, travel, gifts, campaign financing, and prohibited conduct.
- 53% of these were from City employees in administrative or management positions, 11% from non-administrative or managerial employees, 21% from lobbyists, 1% from City vendors or other businesses, 3% from department heads, 8% from City elected officials (or their personal aides calling on their behalf), and the remainder from City appointed officials, members of the public, the media, and other government agencies.
- 49 % came via email; 47 % via telephone; the remainder via walk-ins.
- Employees or officials from every City department (including the City Council) are represented, with the most numerous ones, in descending order, coming from employees or officials in: City Council, Office of the Mayor, Police, Chicago Public Library, Public Health, Family & Support Services, Law, and Inspector General or Legislative Inspector General.

Staff continues to work with the Department of Innovation & Technology on a “beta” version of a secure, searchable database for all such informal advisory opinions. This will enable Board staff to receive instantaneous reports of opinions issued by topic, department, title, date, etc.

H. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received 2 new requests under the Freedom of Information Act. The first request was for aldermanic travel disclosures between January 1, 2010-May 20, 2015 regarding one country and/or one reimbursing entity. This agency located and sent to the requestor one record. The second was for one alderman’s gift disclosures from January 1, 2000-May 22, 2015 and correspondence from that alderman related to travel sponsored by any organization from January 1, 2000-December 31, 2010. The agency located and sent to the requestor 2 records, with 3 pages total.

IV. OLD BUSINESS

1. Case No. 12031.OLIG [2012OLIG0009]

The Chair executed the settlement agreement approved by the Board at its April 22, 2015 meeting. The Chair directed that the fully executed settlement agreement be posted in un-redacted form on the Board's City of Chicago web site.

V. NEW BUSINESS

2. Semi-Annual Review of the Confidentiality of Executive Session Minutes under the Illinois Open Meetings Act

The Board VOTED 5-0 to approve staff's recommendation that the Board's executive session minutes continue to remain confidential.

The Board VOTED 5-0 to adjourn into Executive Session at 3:23 p.m. 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; and (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 Section 2-156-385 and the Board's Rules and Regulations, 4-1 and 4-5, as amended, effective October 23, 2014, 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.

At 4:50 p.m., the Board VOTED 5-0 to reconvene into open session.

VI. MATTERS CONSIDERED AND ACTED UPON BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF EXECUTIVE SESSION MINUTES IN OPEN SESSION

The Board approved the Executive Session minutes of the April 22, 2015 meeting by a VOTE of 5-0.

II. CASES

A. Office of Legislative Inspector General

Meetings Pursuant to §2-156-385(3) on Probable Cause

1. Case No. 12052.OLIG [2012OLIG0003]

Pursuant to §2-156-385 of the Municipal Code, and Board Rules 4.1.B and C, the Board of Ethics met in Executive Session (at this same May 27 meeting) with the alderman who is the subject in this matter and his attorney (who also represented one other subject who did not attend). In Executive Session, the Board considered the entire record before it, including all materials presented to this agency by the Legislative Inspector General, as well as the alderman's written and oral responses to those materials and to questions posed to him by Board staff and members. After that consideration, and deliberation thereon, and re-convening into this open session, the Board: (i) VOTED 5-0 to determine that there no longer exists probable cause to conclude that two of the three subjects of the Legislative Inspector General's investigation (including the alderman) violated the Ordinance; and (ii) VOTED 4-1 to determine that there no longer exists probable cause to conclude that the remaining subject of the Legislative Inspector General's investigation violated the Ordinance, and, accordingly, to take no action in the matter and dismiss the case in its entirety and notify the subjects and Legislative Inspector General accordingly.

Consideration Pursuant to §2-156-385(4) Whether to Sustain a Finding of Probable Cause

2. Case No. 13039.OLIG [2013OLIG0027]

Pursuant to §2-156-385 of the Ethics Ordinance, and Board Rules 4.1.B and C, the Board of Ethics met with the attorney for the alderman who is the subject in this matter (an investigation conducted by the Legislative Inspector General) on April 22, 2015, during the Executive Session of its regularly scheduled meeting. The subject alderman did not attend. Having considered and deliberated regarding the entire record before it, including the Legislative Inspector General's Final Report, and the materials presented by the alderman's attorney, and staff's recommendations, the Board VOTED 5-0 to adopt staff's recommendations as follows:

1. As to the finding in the Legislative Inspector General's Final Report that the City Council employee who was a subject of this investigation violated §2-156-142 of the Ordinance by accepting but not repaying loans from constituents, to: (i) determine that there does not exist probable cause to conclude that the employee violated the Ordinance; and (ii) determine that the investigation was commenced within the two-year statute of limitations period set forth in §2-55-120, and reject the alderman's argument that the investigation violated that section because the last act of misconduct occurred more than two years prior to the investigation's commencement. The Board's determination was based on several Illinois Appellate cases holding that the statute of limitations in a matter involving an oral contract for a loan that is not repaid begins to run from the date that demand is made for payment (not the date that the money changes hands), and here demands were made within the two years prior to investigation's commencement; but still dismiss this Legislative Inspector General's finding outright;

2. As to the finding in the Legislative Inspector General's Final Report that the City Council employee who was one of the subjects of this investigation violated §2-156-140 of the Ordinance by serving on political fundraising committees while having or exercising contract management authority, to determine that there does not exist probable cause to conclude that the subject had or exercised contract management authority, and thus dismiss this Legislative Inspector General's finding outright;
3. As to the finding in the Legislative Inspector General's Final Report that the City Council employee who was a subject of this investigation violated §2-156-135 of the Ordinance by engaging in prohibited political activity while at the Ward Office, or that the alderman allowed this to occur, the Report laid no factual foundation for its conclusion that the employee subject actually engaged in political activity there, and thus to determine that there does not exist probable cause to conclude that the subject violated this section of the Ordinance and dismiss this Legislative Inspector General's finding outright;
4. As to the finding in the Legislative Inspector General's Final Report that the subject alderman violated §2-156-115 of the Ordinance by failing to maintain a daily record of the attendance of his or her personal employees, and certify them as correct (or designate an employee to do so), and make the records available for inspection, to determine that there still exists probable cause to conclude that the alderman violated this section of the Ordinance. The Board directed that the alderman be notified that the Board will attempt to settle the matter by settlement agreement in which the alderman: (i) admits that proper time records were not kept, preserved and made available; (ii) agrees to ensure that proper time records are kept, certified and made available; and (iii) pays an appropriate fine; and
5. As to the finding in the Legislative Inspector General's Final Report that the subject alderman had failed to cooperate with the investigation, in violation of chapter 2-55 of the City's Municipal Code (specifically, §§2-55-100 and -130): (i) determine that the Board of Ethics has no jurisdiction to consider this finding or make probable cause findings thereon, because it does not fall within the Ethics Ordinance's purview, or the Board's jurisdiction--while failure to cooperate with an inspector general investigation is a serious matter, the drafters of the Municipal Code placed the remedies and sanctions for any such violations in chapter 2-55. These remedies and sanctions include fines and incarceration, but, per §2-55-130, any action seeking these remedies or sanctions would need to be brought in the Cook County Circuit Court by the corporate authorities; (ii) determine that there does not exist probable cause to conclude that the subject alderman violated the Governmental Ethics Ordinance; and (iii) refer the matter to the Legislative Inspector General and to the Corporation Counsel for any action deemed appropriate, so as to avoid this problem in future cases.

Consideration Pursuant to §2-156-385(4) on Whether to Find Probable Cause

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| 3. <u>Case No. 15028.01.OLIG</u> | 7. <u>Case No. 15028.05.OLIG</u> |
| 4. <u>Case No. 15028.02.OLIG</u> | 8. <u>Case No. 15028.06.OLIG</u> |
| 5. <u>Case No. 15028.03.OLIG</u> | 9. <u>Case No. 15028.07.OLIG</u> |
| 6. <u>Case No. 15028.04.OLIG</u> | 10. <u>Case No. 15028.08.OLIG</u> |

The Board considered the eight (8) “Confidential Closing Addendums” submitted by the Legislative Inspector General on May 1, 2015, and staff’s analysis of and recommendations on them. The Addendums explained the Legislative Inspector General’s findings that seven (7) City Council employees and one (1) alderman had failed to cooperate with its investigation, in violation of chapter 2-55 of the City’s Municipal Code (specifically, §§2-55-100 and -130). These findings arose from one (1) investigation approved by the Board; the investigation approved was for one (1) of the eight (8) persons, who was alleged to have engaged in prohibited political activity while on City compensated time. None of the eight (8) “Addendums” addressed prohibited political activity, however, but instead addressed the issue of failure to cooperate with an investigation.

The Board VOTED 5-0 to adopt staff’s recommendations that the Board: (i) determine that the Board has no jurisdiction to consider the Legislative Inspector General’s findings regarding failure to cooperate, or make probable cause findings thereon, because they do not fall within the Governmental Ethics Ordinance’s purview, or the Board’s jurisdiction--the failure to cooperate with an inspector general investigation is a serious matter, but the drafters of the Municipal Code placed the remedies and sanctions for any such violations in chapter 2-55, and these remedies and sanctions include fines and incarceration, but any action seeking these remedies or sanctions would, per §2-55-130, need to be brought by the corporate authorities in the Cook County Circuit Court; (ii) determine that there does not exist probable cause to conclude that the eight (8) violated the Governmental Ethics Ordinance; and (iii) refer the matters to the Legislative Inspector General and to the Corporation Counsel for any action deemed appropriate, so as to avoid this problem in future cases.

Consideration of Petitions to Initiate Investigations Pursuant to §2-55-080(b(ii))

11. Case No. 15023.OLIG [2013OLIG0053]
12. Case No. 15030.OLIG [2014OLIG0028]

The Board VOTED 5-0 to grant the Legislative Inspector General’s petitions to initiate investigations on the matters presented by him to the Board.

B. Query and Consult Summary

13. Case No. 15022.CNS, Campaign Financing

In response to an inquiry by a Board member, staff examined a media report that a City elected official serves as chair and treasurer of a political action committee whose stated purpose was to support two candidates for other City elected office, and in 2015 accepted more than \$1,500 in contributions from several persons who are doing business with the City. The Board and staff considered the available facts, including public filings made by the political action committee with the Illinois State Board of Elections, and the relevant provisions of the Governmental Ethics Ordinance, and whether, and if so, under what conditions the Board may properly consider and determine whether contributors to this political action committee would be limited to a combined total of \$1,500 per calendar year in contributions in the aggregate to the official candidate committee of the elected City official and to this political action committee, and therefore whether there could be violations of §2-156-445 of the Ordinance by contributors to this political action committee.

The Board VOTED 5-0 to determine that there is reasonable cause to have this situation investigated, and to direct a legal staff member to submit a signed and sworn complaint to the relevant investigating authority requesting an investigation to ferret out how much control the elected official had over the committee's expenditures or transfers out, and whether any of the contributors who have given more than \$1,500 to the political action committee are subject to the Ordinance limitations on political contributions.

14. Case No. 15027.Q, Interest in City Business

Staff reported that it had advised an incoming City employee of the relevant restrictions imposed by the Ordinance once City employment begins. Specifically, staff addressed §2-156-110 (financial interest in City business). The individual wishes to continue being a paid member of a board, and also owns stock of a privately held company that will be a joint venturer in a contract with the employee's City department. The company had previously employed the incoming City employee, but was not the employee's immediate pre-City employer (thus the Ordinance's "reverse revolving door" provision, §2-156-111(d), does not apply).

Staff advised the incoming employee that, as long as the stock owned in the privately held company is worth more than \$1,000, the employee may not make or participate in decisions regarding the company, and thus should act to sell the stock back to the company, and should also seek advice regarding the City's Personnel Rules, which prohibit City employee from exercising contract management authority with respect to any person doing City business if the employee has a business relationship with that person. Further, as to the membership on the advisory board, the incoming employee should seek advice under the City's Personnel Rules, which prohibit certain employees from having an outside employment relationship with any person other than the City. Finally,

staff advised the incoming employee that the fact that the employee and the employee's spouse have a private services contract with the spouse of a federal regulator (with whose federal agency the employee would likely need to interact in an official capacity) does not present any issues under the Ordinance, but that the federal regulator may wish to seek advice from the federal agency's own ethics officer under any applicable federal ethics rules.

15. Case No. 15032.Q, Representation

Staff reported that an elected official who is a licensed Illinois attorney requested an advisory opinion addressing how the Ordinance would affect the law firm of which the official is a partner, and the official's conduct as a City elected official. Staff advised that §2-156-111(d) prohibits the official from "acting in a decision-making capacity," in this case, participating in any City discussions or votes concerning matters: (i) "benefitting" the firm, that is, City matters in which the firm represents the person (or one of the persons) with the matter, or any person who files a City "EDS" (Economic Disclosure Statement) in the matter; or (ii) in which any of the official's former lobbying clients are parties. To avoid even the appearance of impropriety, the official was also advised not to participate in City governmental matters involving any client for which or for whom the official acted as an attorney or lobbyist throughout the official's pre-City tenure at the law firm, although the Ordinance, literally read, extends that prohibition only to "immediate former clients." Staff also advised that this provision still applies even if the official then becomes an employee of the firm, because, even though the firm would be the official's current employer during the official's term as an elected official, it is also the official's immediately preceding employer. The intent of the reverse revolving door provision is to ensure that City employees and officials do not favor their immediately preceding employer, and that risk still exists even if the previous employer is also the current ("secondary") employer.

The official was also advised of the prohibitions against representing or receiving any compensation from the firm's representation of clients in proceedings before or against the City, and to recuse from any City discussions, meetings, or votes concerning those matters, or any matters on which the firm is representing a party, and not to speak with any other City employees or officials with respect to such matters, and disclose to the Board of Ethics regarding and then abstain from voting on such matters. These restrictions are imposed by §§2-156-030, -080, and -090. The official was also advised that, unless the official's partnership or ownership interest in the firm is liquidated, it will be precluded under §2-156-111(b) from becoming a City contractor, and of the relevant restrictions under §2-156-142(f), (that the official may not accept anything of value in exchange for assisting any person (such as the firm or its clients) with respect to any matters that are before or could come before his City agency), and to make a good faith effort to identify known clients of the firm that have matters pending before the agency, and to disclose and recuse from these matters, even if the firm is not representing these clients in these matters.

Finally, the official was advised that, provided these restrictions are observed, the firm itself is not precluded from representing clients before or against the City, even in matters or transactions presented to the official's City agency, and that the official should refrain from mentioning his City position when courting potential clients, and on firm business cards, and, last, to consult with qualified counsel or the Attorney Registration and Disciplinary Commission to ensure the official's and the firm's compliance with the Illinois Supreme Court's Rules of Professional Conduct.

16. Case No. 15033.CNS, Interest in City Business

Staff reported that it had advised an incoming City employee regarding continuing service as a paid Board member of a privately held entity, and of the relevant restrictions imposed by the Ordinance's "reverse revolving door" and "financial interest in City business" provisions. The incoming employee was advised that the Ordinance does not prohibit paid outside board service, though there would be disclosure requirements and the employee would be subject to the prohibitions in the "Representation of Other Persons" section, and to seek counsel as to whether the City's Personnel Rule that prohibits certain City employees from having "an outside employment" relationship would apply.

Staff also advised that, under the reverse revolving door provision (§2-156-111(d)), for the first two years of City employment, the employee must institute an ethical screen and may not act in a decision-making capacity with respect to City matters with the employee's immediate pre-City employer, though this does not preclude making policy decisions that affect the pre-City employer as a member of a class of other similarly situated City vendors. Staff advised how to implement this ethical screen. The incoming employee was advised about stock holdings in the immediate pre-City employer. The employee would be prohibited from exercising contract management with respect to this entity if the employee has accrued more than \$15,000 of its stock since November 1, 2012. For the employee's first two years, the Ordinance prohibits this anyway, but, after the second year of City service, the employee would continue to be prohibited from exercising contract management authority with respect to City contracts with or involving the pre-City employer. The incoming employee was also advised to seek advice regarding applicability of the City's Personnel Rules. Finally, the incoming employee was advised to dilute enough of the ownership of the common stock of any company with which the employee would negotiate or deal or over whose City contracts the employee would exercise management authority so that the allotment that the employee purchased after November 1, 2012 is less than \$15,000 (not including dividends or shares acquired through dividend reinvestment).

C. Dismissed and Referred Complaints

17. Case No. 15019.C, Confidential Information

Staff reported that the office received a complaint from a City employee alleging a breach of confidentiality by a co-worker regarding social security numbers. Staff forwarded the matter to the Inspector General, pursuant to §§2-156-380(a) and -380(n-1), and advised the employee of this. Staff also reported that an attorney from the Law Department asked where to locate the City's social security number policy, as there was an apparent breach. Staff showed her the location of policy on our website.

18. Case No. 15021.C, No Jurisdiction

Staff reported that the office received an anonymous letter alleging a conflict of interest by a City employee because that employee continued to meet and work directly with a private organization, his previous employer. Pursuant to §§2-156-380(a) and -380(n-1) of the Ethics Ordinance, we referred this matter to the City's Inspector General's office for action as that office deems appropriate.

19. Case No. 15025.C, No Jurisdiction

Staff reported that the office received an anonymous letter alleging that a City employee provided inaccurate answers on his Statement of Financial Interests forms regarding property he owns in Chicago. Pursuant to §§2-156-380(a) and -380(n-1) of the Ethics Ordinance, we referred this matter to the City's Inspector General's office for action as that office deems appropriate.

20. Case No. 15026.C, Campaign Financing

Staff reported that, in the regular course of processing the Quarterly Lobbying Activity Report from a lobbyist, it noticed that the lobbyist disclosed a \$2,500 contribution on March 31, 2015 to the political committee of a City elected official. Staff then reviewed the publicly available campaign contribution reports filed by this official's candidate committee with the Illinois State Board of Elections ("ISBE"), which corroborated this contribution, and also showed that the committee was formed in October 2014 with the stated purpose of electing that official and to support Democratic candidates; and that it filed its D-1 Statement of Organization with the ISBE on October 22, 2014. At the time of the contribution, the lobbyist was a registered lobbyist. Pursuant to §2-156-380(n-1), we referred this matter to the City's Inspector General's office as a complaint, alleging potential violations of Article VI of the Ordinance (specifically §2-156-445(a)), for any action as that office deems appropriate.

21. Case No. 15031.C, No Jurisdiction

Staff reported that it received an anonymous letter alleging that a City employee has been misusing City time and resources by allegedly having sexual affairs with City employees in her office while on City time. Pursuant to §2-156-380(a) of the City's Governmental Ethics Ordinance, we referred the matter to both the City's Inspector General's office and to the employee's Department Head for appropriate action. Staff further reported that that the Department Head advised staff that he had received

the complaint prior to our referring it and that he had referred it to the City's Department of Human Resources for investigation, in part because he deemed the complaint to be untrue and thus defamatory.

III. OTHER BUSINESS

22. Pending Case List. Discussion of this list was deferred.

At 4:55 p.m., the Board VOTED 5-0 to adjourn the meeting.