

# Board of Ethics

## Open Session Minutes

May 22, 2017, 1:10 p.m.  
740 North Sedgwick, Suite 500

### **BOARD MEMBERS PRESENT**

William F. Conlon, Chair  
Nancy C. Andrade  
Stephen W. Beard  
Mary T. Carr  
Frances R. Grossman

### **STAFF PRESENT**

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

### **BOARD MEMBERS ABSENT**

Dr. Daisy S. Lezama  
Zaid Abdul-Aleem

### **MEMBERS OF THE PUBLIC PRESENT**

Bill Ruthhart, Chicago Tribune  
Nicholas A. Valorano, Mayer Brown  
Chris O'Malley, Perkins Coie  
Orlando Ortiz, Project Six  
Alejandra Cancino, BGA  
Chris Norborg, Office of Inspector General

The Board's guests introduced themselves.

### **I. APPROVAL OF MINUTES**

The Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama and Stephen W. Beard, absent) to approve the open session minutes of the Board's meeting of April 19, 2017.

### **II. CHAIR'S REPORT**

The Chair made no formal report.

### **III. EXECUTIVE DIRECTOR'S REPORT**

#### **A. Education**

##### **Classes and Other Presentations**

Since the last Board's last regularly scheduled Board meeting on April 19, 87 employees and officials attended regularly scheduled classes on April 18, 27 and May 9 and 18. There are 65 scheduled for classes on May 24, 25 and June 1 and 13.

On April 24, staff made a presentation to 27 incoming laborers in the Department of Streets & Sanitation, at the request of the Commissioner and the Laborers' Local Union #1001.

On April 24 and May 15 the first two of three classes were held for all employees of the newly-reorganized Civilian Office of Police Accountability (COPA) (a total of 74 attended).

The last will be held in July. Board legal staff has also assisted COPA in drafting its own internal gifts, conflicts of interests, and confidentiality policies.

On May 25, at the request of the Mayor's Office and U.S. State Department, staff will make a presentation to a visiting delegation of 21 anti-corruption officials, prosecutors, representatives from NGOs and journalists from 15 countries in Africa (Benin, Burkina Faso, Central African Republic, Democratic Republic of Congo, Cote d'Ivoire, Gabon, Ghana, Guinea, Mali, Malawi, Nigeria, Senegal, Somalia, Togo, and Uganda).

On May 31, staff will present a special training program for certain Chicago Police Department personnel (there will be more on this in closed session).

### **On-line Training**

Staff finalized the annual 2017 on-line training, but given the ongoing lobbying matters, staff has delayed it, and expects to have it posted in the next week.

### **Lobbyist Training**

All registered lobbyists are required to complete annual training, on line. To date, 330 lobbyists have completed their training – about 50% of registered lobbyists. They must complete it before July 1, 2017.

## **B. Advisory Opinions**

Since the last regularly scheduled Board meeting on April 19, 2017, staff has issued 286 informal opinions.

During this time, the leading categories were, in descending order: gifts; travel; lobbying; use of City property/authority; Statements of Financial Interests; and campaign financing. The leading City departments from which requesters came in this period were (in descending order): City Council; Chicago Police Department; Mayor's Office; Chicago Public Library; Department of Public Health; Department of Aviation; Department of Procurement Services; Department of Family & Support Services; and Department of Law.

171 of these were from City employees in administrative or management positions; 31 from non-administrative/managerial employees; 17 from 9 individual department heads; 16 from 11 different City elected officials; 4 from aldermanic Chiefs of Staff; one (1) from an ethics official in other government agencies; the remaining were from: 17 lobbyists or persons calling to inquire whether they need to register as lobbyists; 12 City appointed officials, 17 from contractors or vendors.

51% came via email; 48% via telephone; the remainder via walk-ins.

Time permitting; several informal opinions of note will be discussed in closed session.

## **C. Website Modifications**

**Summary Index of Formal Advisory Opinions/Text of All Formal Advisory Opinions**

All formal Board opinions issued since 1986 are now posted on the Board's website (more than 875 of them), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once approved 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. There are only a handful of other ethics agencies that have comparable research tools.

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

### **Summary Index of Board Investigations and Regulatory Actions**

We will soon post the summary index of all Board 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 will include an ongoing summary of all regulatory actions involving lobbying and campaign financing the Board is currently pursuing based on documents available to the public. It will name names and penalties assessed where authorized by law. There are, to date, 105 such matters. The document makes clear that, despite comments made in the media over the last decade, the Board has been a robust enforcement agency, not a "do-nothing" agency. This continues, even though the Board no longer has investigative authority.

### **Summary Index of Ongoing Investigations/Adjudications**

We continue to post on the Board's website an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the Inspector General ("IG") (a total of 2 since July 1, 2013) and the former Office of the Legislative Inspector General ("LIG"), since January 1, 2012, and the status of all 50 petitions to commence investigations that were presented to the Board by the former Office of the Legislative Inspector General. It is updated as appropriate, consistent with the Ordinance's confidentiality provisions. However, as of today, there have been no completed investigative reports sent to the Board by the Inspector General since December 2015, so there has been nothing to update since that last IG investigation was settled for the maximum \$2,000 fine in April 2016.

Note: all future adjudicated or settled matters (on or after July 1, 2013) shall include the names of violators and penalties assessed.

## **D. 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 inspector general or, if he or she fails to do so within two 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 mid-level City employee in an operating department, and one (1) department head and one (1) former department head

that their past conduct violated the Ordinance. In three (3) of these six (6) 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. The Board has not received, as of today, a report of any completed investigation in the other matter (from the IG). 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.

There is no legal requirement imposed on the IG to report back to the Board on any actions it takes on matters or persons referred to it by the Board, unless the IG completes an investigation and submits a petition for a finding of probable cause to the Board based on that investigation. This is unlike the arrangement in New York City between its Conflicts of Interests Board and Department of Investigation.

#### **E. Lobbyists-Regulation and Enforcement**

As of today, there are 671 lobbyists registered. This represents a 4% increase in the number of registered lobbyists since the April 19 meeting, and is also the largest number of lobbyists registered with the Board since 2011. The Board has collected \$354,275 in registration fees.

The deadline for registered lobbyist to file their quarterly activity reports was April 20, 2017. On April 21, 33 lobbyists had not filed. On April 25th we sent a notice, pursuant to the Ordinance, giving these late-filing lobbyists a further 10 business days to file, that is, until May 9th. All but two (2) timely filed. They were determined to be in violation the Ordinance, and their names posted on the Board's website. By law, they would have been subject to fines beginning May 24, but each filed prior to that date and no fines were assessed.

On March 15, staff sent to the Law Department requests to collect the determined amounts of \$6,000 from the two (2) remaining lobbyists who have not paid their fines (after filing their documents, but beyond the probable cause notice period).

#### **F. 2017 Statements of Financial Interests**

To date, 3,046 employees and officials have filed their 2017 Statements of Financial Interests, which is 83% of those required to file them by the close of business on May 31, 2017. The office sent a second reminder via email or first class mail to all those who had not filed as of May 15, as well as spreadsheets indicating who has not filed on May 16. Staff is in regular contact with ethics liaisons from every City department and aldermanic office, reminding them to remind their not-yet-filed personnel to file.

Newly hired, appointed, or promoted employees or officials are flagged by ethics liaisons or the Mayor's Office as filers, and are then sent notices to file (with password information) by the Board's "EFIS" system.

Filed forms are posted on the Board's website as soon as they are processed by staff. Typical processing time is 24 hours.

**G. Freedom of Information Act**

Since the last regularly scheduled Board meeting, the office has received no (0) requests under the Freedom of Information Act.

**IV. OLD BUSINESS**

None

**V. NEW BUSINESS**

**Semi-Annual Review of the Confidentiality of Executive Session Minutes Pursuant to The Illinois Open Meetings Act**

The Board considered staff's recommendation and VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama and Stephen W. Beard, absent) to adopt staff's recommendation to continue confidentiality of executive session minutes pursuant to the Illinois Open Meetings Act.

At 1:16 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama and Stephen W. Beard, absent) 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, 4., 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.

The Board then excused its guests until the open session reconvened.

At 2:10 p.m., the Board VOTED 4-0 (Chair William F. Conlon, Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to reconvene into open session, and the Board invited its guests to re-join the open session of the meeting.

**IV. MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION**

The Board VOTED 4-0 (Chair William F. Conlon, recusing, and Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) in Case No. 17011.07.LOB to adopt staff's recommendation and determined that there is no probable cause to conclude that an individual had engaged in unregistered lobbying, and

to dismiss the entire matter involving unregistered lobbying by an individual and the retention of that individual by an entity.

The Board VOTED 4-0 (Chair William F. Conlon, recusing, and Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) in **Case No. 17011.13.LOB** to adopt staff's recommendation and determined that there is no probable cause to conclude the named individual had engaged in unregistered lobbying, and to dismiss the individual, only, named in this matter.

The Board VOTED 4-0 (Chair William F. Conlon, recusing, and Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) in **Case No. 17011.14.LOB** to adopt staff's recommendation and to defer the matter involving apparent unregistered lobbying by an individual and the retention of that individual by an entity.

The Board VOTED 4-0 (Chair William F. Conlon, recusing, and Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) in **Case No. 17011.18.LOB** to adopt staff's recommendation and to determine there is probable cause to conclude an individual had engaged in unregistered lobbying, in violation of the Ordinance, and to issue a notice of the Board's finding of probable cause to the individual, giving the individual until the close of business on June 7, 2017 to respond with any arguments, facts or other materials the individual wish to present in this matter.

At 2:13 p.m., member Nancy C. Andrade excused herself from the meeting.

At 2:13 p.m., Chair William F. Conlon rejoined the meeting.

At 2:14 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Daisy S. Lezama, absent) to adjourn from open session and to reconvene in executive session pursuant to those provisions of the Open Meetings Act already read into the record and to excuse its guests until the open session reconvened.

At 3:05 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to reconvene into open session, and the Board invited its guests to re-join the open session of the meeting.

#### **IV. MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION**

##### **APPROVAL OF THE EXECUTIVE SESSION MINUTES OF THE APRIL 19, 2017 SPECIAL MEETING.**

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade, and Dr. Daisy S. Lezama, absent) to approve the executive session minutes of the April 19, 2017 meeting.

#### **VI. CASEWORK**

##### **A. CAMPAIGN FINANCING**

1. Case No. 17017.CF

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade, and Dr. Daisy S. Lezama, absent) to approve staff's recommendations and issue an advisory opinion determining that:

(i) various businesses constituted "affiliated companies for purposes of the Ordinance's limitations on political contributions, based on factors set for in previous Board opinions 03010.55.CF and 13043.A;

(ii) the Board would take no further action as to contributions made to an elected City official's authorized political committee by individual executives, employees, or owners of the contributor and/or its various affiliated companies, because nothing in the record before the Board caused it to believe that these contributions constituted potential violations of the Ordinance. Rather, there would be a violation from an individual executive's or owner's, etc. contributions if and only if, at the time the individual made a contribution exceeding \$1,500 to the authorized political committee, he or she was either individually doing or seeking to do business with the City or a named sister agency, or was a registered lobbyist, or was at any time reimbursed for the contributions by the business or employer or one of the affiliated companies;

(iii) affiliated companies of the contributor, which were named in documents transmitted to and then approved by City Council in an ordinance enabling these companies to operate retail or food concessions at one of Chicago's airports, were "seeking to do business" with the City because they had a "matter pending before the City Council involving concession agreements" in the six months prior to the date other affiliated companies made contributions in a calendar year exceeding \$1,500 to the authorized political committee of an elected official – they had a matter "involving concession agreements." Thus, as a matter of law, to be deemed to be seeking to do business with the City by virtue of having had a matter involving concession agreements pending before City Council, a concessionaire must be named in the documents transmitted to City Council as a tenant, subtenant, etc.;

(iv) these named concessionaires or "Subtenants" were not "doing business with the City," because they did not have privity of contract with the City, per Case No. 16006.A;

(v) there was an Ordinance violation by both the contributor and elected City official's political committee, because affiliated companies had contributed in excess of \$1,500 in a calendar year to the committee within six month of period in which the matter involving concession agreements (in which affiliated companies were named concessionaires and thus "seeking to do business with the city") was pending before City Council;

(vi) the Board advised the political committee and contributor to take the steps prescribed under the Ordinance to effect a refund of the excess amount contributed, thus erasing a violation by operation of law, or present the Board a valid reason why reimbursement was or should not be effected, and that, if neither a refund nor valid reason for no refund was presented, the Board would impose the penalties prescribed in the Ordinance, namely a fine of three times (3x) the amount of the excessive contribution, imposed on each: the contributor and committee; and

The Board also directed the staff to examine other public documents to ascertain whether the contributor had violated the Ordinance by contributing to the committees of additional City elected officials during the relevant time period.

**B. LOBBYING**

2. Case Nos. 17011.01.LOB et seq., Unregistered lobbying

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade, and Dr. Daisy S. Lezama, absent) to approve staff's recommendations with respect to continuing future unregistered and unreported lobbying cases, specifically Case No. 17011.27.LOB, for which the Board does not yet have sufficient information to determine whether there is probable cause to conclude that an individual engaged in unregistered lobbying.

Last, the Chair again thanked members of the media and watchdog groups, both those present at the meeting and those not present, for their work in making part of the public record materials on which the Board's lobbying (and other) cases are based. Because the Board does not have authority to investigate potential violations of the Ordinance's lobbying or other Ordinance provisions, it relies on other persons, including the media and watchdog groups, to make such materials, including emails, videos, etc., part of the public record, enabling the Board to direct its professional staff to review them for apparent Ordinance violations and then bring the relevant facts back to the Board, which can then consider whether the evidence is sufficient by itself to warrant a finding of probable cause.

At 3:12 p.m., the Board VOTED 4-0 (Nancy C. Andrade, Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to adjourn the meeting.