

BOARD OF ETHICS
OPEN SESSION MINUTES
SEPTEMBER 14, 2018, 12:08 P.M.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Nancy C. Andrade
Dr. Stephanie Cox-Batson
David L. Daskal
Dr. Daisy S. Lezama

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard Superfine, Legal Counsel
Paully Casillas, Staff Administrator

BOARD MEMBERS ABSENT

Zaid Abdul-Aleem
Stephen W. Beard

GUESTS PRESENT

James Ferg Cadima, Office of Inspector General
Chris Norborg, Office of Inspector General
India Daniels, City Bureau
Daniel Wolk, City Bureau

The guests, Board and staff introduced themselves.

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Stephen W. Beard, absent) to approve the open session minutes of the Board's meeting of July 23, 2018.

II. CHAIR'S REPORT

None

III. EXECUTIVE DIRECTOR'S REPORT

A. Board Members' Term Renewal

I'm pleased to report that the terms of Zaid Abdul-Aleem and Daisy Lezama will (I trust) be renewed for a four-year term, at the City Council meeting on September 20. Thank you to all Board members, who volunteer your time and expertise to this agency and to the citizens of Chicago.

B. Education

Classes and Other Presentations

Since the Board's last regularly scheduled meeting, 98 employees and officials attended classes here on July 31, August 7, 16, and 28, and September 6.

100 are scheduled for classes here on September 18 and 27, and October 4 and 16.

All classes cover sexual harassment.

On July 31, the Executive Director gave a class for the staff of the First Ward.

On September 12, the Executive Director participated in a “town-hall” style class for all employees in the Department of Aviation, at the invitation of its new Commissioner. Also presenting were the Commissioner of Human Resources, the Inspector General, the City’s Chief FOIA attorney, and the Managing Deputy Commissioner of the Department of Aviation. 150 employees attended, but the presentations were recorded so that all departmental employees can view them.

Classes are being scheduled for all personnel in the Office of the City Treasurer, at his request, and for all hearing officers at the City’s Department of Administrative Hearings, at the Director’s request.

The Executive Director served as a panelist on “State and Local Campaign Finance Laws” and “State and Local Lobbying, Ethics and Gift Laws” for the Practicing Law Institute in Washington, D.C. on September 7. The program will be repeated in San Francisco on October 5. Other panelists will be from the law firms of Skadden, Arps, Slate, Meagher & Flom, and Nielsen Merksamer, Parrinello, Gross and Leoni, and the Executive Director of the Massachusetts Office of Campaign and Political Finance.

The office is still working with the Chicago Police Department’s Instructional Design and Quality Control Section and helping them design a curriculum on ethics scenarios for an Ethical Decision-Making class.

On-line Training

For Lobbyists

All but 27 lobbyists completed their mandatory annual training before the July 3, 2018 deadline. The 27 were found in violation of the Ordinance, and their names were posted on our website on July 31. All of them have completed their training, so no fines are ongoing. Four (4) were fined \$200; one (1) was fined \$400, for a total \$1,200 in fines.

Although the Ethics Ordinance does not require that annual lobbyist training cover sexual harassment, this training for lobbyists does. It is as important to educate potential victims of sexual harassment about their rights as it is to reinforce what constitutes sexual harassment (and applicable penalties) to potential harassers.

For All City Employees and Officials

To date, 22,176 employees have completed the annual 2018 on-line training program, which also includes a unit on sexual harassment (drafted by our colleagues in the City’s Department of Human Resources). This is about 72% of the total scheduled. 86 are in progress.

For aldermen

The training for aldermen was posted, but to date, none have completed it. Please note that, on June 29, two reporters viewed the training, with particular attention to the unit on sexual harassment.

For appointed officials

We are working on a PowerPoint for all City appointed officials, including members of this Board. It will be distributed to all City Boards and Commissions in August, with the assistance of the Office of Legislative Counsel and Governmental Affairs.

C. City Council Educational Initiative/Handbook

In conjunction with the Law Department, IG, and members of the City Council, including representatives from its various caucuses, Board staff met January 16 and February 27, March 27, April 16, and May 21 to work on a “handbook” that will address and provide guidance on certain issues common to aldermen and their staff; these include some ethics ordinance issues. The Board, Law Department, and IG are acting under the guidance of the City Council on this project, in an effort to identify and promote various best practices. We anticipate producing a document by early Fall.

D. Council on Governmental Ethics Laws (“COGEL”)

The 2018 annual conference will be in Philadelphia in December. Further, the 2019 annual conference will be here in Chicago, at the Michigan Avenue Marriott, in early December of that year. We will work closely with the Mayor’s Office, City Council, and Budget Office to ensure a successful conference. We expect about 450 ethics, campaign financing, lobbying, freedom of information, and election administration officials from across the U.S. and Canada to attend, plus private practitioners and academics. We will serve on the conference’s program committee, and will be reaching out to various local officials and media personnel to serve on panel discussions.

E. Executive Editorship – Public Integrity

I am pleased to report that I have been named to the Executive Editorial Board of the journal *Public Integrity*, which is affiliated with the American Society for Public Administration. It is published by Taylor & Francis six (6) times a year. We are working on a joint project between this journal and the COGEL Guardian, to bridge gaps between academics and practitioners.

F. Sister Agency Ethics Officers

We met on June 19 with our ethics counterparts of other local governmental agencies: the Cook County Board of Ethics and the Ethics Officers from the Chicago Public Schools, City Colleges of Chicago, and Chicago Housing Authority. Topics discussed were our respective roles in investigating or adjudicating claims of sexual harassment, political activity (given that we are in election season) and contracting with the government entity. Our next meeting is scheduled for September 18.

G. 2019 Budget

We are working on our 2019 appropriation request. We will be asking for a modest increase in non-personnel costs, in part to cover hosting expenses for the 2019 COGEL Conference, which will be held at the Marriott Michigan Ave. in December 2019, and to replace the software we use for lobbyist training. Our request was due on July 31.

H. 2018 Statements of Financial Interests

On March 1, notices to 3,719 City employees and officials went out via email and U.S. first class mail advising them of the requirement to file 2018 Statements of Financial Interests before June 1. This includes 47 identified individuals who fall into the definition in the Ordinance of “City Council employee” even though they are paid as independent contractors. To date, all filed. We posted the names of all 30 violators on our website.

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.

I. Candidates’ Statements of Financial Interests

Pursuant to §2-156-150(d)(iii), each person who qualifies as a candidate for elected City office must file a Statement of Financial Interests with the Board within five (5) days after so qualifying. By following media reports – particularly those by thedailyline.com – Board staff tracks and notifies each candidate in writing of the filing requirement. To date, 65 known qualified candidates (not including incumbents) for the February 2019 Consolidated Municipal Election have been notified to file. We post all filed Statements on our website.

Note: incumbents also must file, but their forms are posted and searchable through a different page, and their deadline was before June 1, 2018.

J. Advisory Opinions

Since the Board’s last meeting on June 15, we have we issued 381 informal advisory opinions (and one (1) formal opinion which is on today’s agenda). The leading categories were, in descending order: travel; lobbying; gifts; campaign financing; outside employment; political activity; City property; Statements of Financial Interests; and financial interest in City business. The leading City departments in which requesters were employed in this period were (in descending order): Chicago Police Department; Mayor’s Office; City Council; Department of Public Health; Chicago Public Library; Department of Law; and Department of Procurement Services.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. 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.

K. Revised Educational Brochures

We have revised all of our 24 “Plain English” and other educational brochures, and published a new one explaining the “trade skill exception” to the post-employment prohibitions. Re-revised this past month were expanded brochures explaining the City’s Campaign Financing laws, specifically targeted for campaign contributors and candidates.

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

All formal Board opinions issued since 1986 are posted on the Board’s website (nearly 900 of them), 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.

M. 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). The index includes an ongoing summary of all regulatory actions the Board is currently pursuing, including one resolved at the Board’s April 2018 meeting, and a second the Board took up at its June meeting and should resolve today.

In the former matter, the Board found at its September 2017 meeting that there is probable cause to believe that a City employee has violated the Ordinance’s Financial Interest in City Business and Statement of Financial Interests provisions of the law due to an independent contract the employee had with a City Council member. A meeting with the subject and the subject’s attorney was held in closed session at the Board’s April 2018 meeting. The Board determined that the individual committed a minor violation by having a prohibited financial interest in City business through an independent contract with a City Council member, paid with City funds, which yielded to the employee more than \$1,000 in a calendar year. At the Board’s direction, staff sent out a memorandum to all City Department heads and aldermen reminding them of this restriction and requesting that they review all their independent contracts to ensure that no City employees might be in violation of the Ordinance.

In the latter pending matter, the Board found at its January 2018 meeting that there is probable cause to believe that an elected official violated the City property, representation of other persons and fiduciary duty provisions of the Ordinance by repeatedly contacting a City department regarding a pending matter that did not involve a constituent of the official in an apparent attempt to influence the speed and outcome of the matter. The elected official and his counsel met with the Board on June 15, and the matter is on today’s agenda.

These are matters in which the Board is able to make a finding of probable cause based solely on facts and materials available to it, without a factual investigation by the IG.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There are, to date, 113 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 through the Board’s ongoing regulatory actions, described above, and with respect to

lobbying and campaign financing, even though the Board no longer has investigative authority.

N. Summary Index of Ongoing IG 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 seven (7) since July 1, 2013) and the former Office of the Legislative Inspector General ("LIG"), from January 1, 2012 through November 2015, and the status of all 50 petitions to commence investigations presented to the Board by the LIG. It is updated as appropriate, consistent with the Ordinance's confidentiality provisions.

Whenever the IG presents the Board with a completed ethics investigation, 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 evidence submitted in its completed ethics investigation, including a review to ensure that the IG conformed with the requirement that it complete 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 investigations are commenced within two (2) of the last alleged act of misconduct. Then, if the Board finds that the evidence presented shows that there is 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. The Ordinance provides that this meeting is ex parte – no one from the City's Law Department or IG is present. The Board may request clarification from the IG as to any evidence adduced in its investigation before making a probable cause finding. 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.

Three (3) of these seven (7) IG matters remain pending.

On April 16, 2018, the IG presented the Board with its fifth completed investigation and petition for probable cause. In Case No. 18012.IG, at the Board's May 2018 meeting, it dismissed one part of the IG's petition but found probable cause in the other. The matter involves potential violations of the Ordinance's post-employment provisions by a former alderman (the Ordinance prohibits former aldermen from engaging in lobbying the City for one year after leaving office). The part of the case dismissed by the Board pertained to the alderman's job interviews with a potential post-City employer while that potential employer had matters pending. The Board found that there was no evidence in the IG's investigative record to show that the alderman acted on any matters involving the potential employer and that the employer had no matters pending before the alderman. The subject's attorneys will be present at today's meeting, and the Board can discuss potential settlement of the matter.

The sixth IG matter, Case No. 18018.IG, was presented to the Board by the IG on May 25, 2018. It involves a petition for probable cause based on an IG investigation into whether a City employee had a prohibited financial interest in a City contract by virtue of owning 100% of a company that was named and paid as a subcontractor on a City contract for six (6) years. At its June meeting, the Board considered the case, but could not find probable cause without a formal request for clarification as to when the IG commenced and completed its investigation. The Board sent its request on June 18, and also requested that, on all future investigations the IG clearly indicate the dates on which its investigations were commenced and concluded. The IG responded on June 27 and agreed to state the relevant

investigation dates in its summary reports sent to the Board in future cases. The IG also explained that the date of a "Case Initiation Report" is the date it opens a case for investigation (in this case, that was May 23, 2016), and the date the investigation concludes is the date the IG "formally designates a case as closed in its case management system." In this case, that was the date it sent its notice to the subject: April 25, 2018. As required by law, the Board's designee has reviewed the IG's report and supporting evidence and will make a recommendation to the Board as to whether the evidence warrants a finding of probable cause to believe that the subject violated the Ordinance. This matter is on today's agenda.

In the seventh IG matter, Case No. 18023.IG, the IG presented its completed investigative report and corroborating evidence on June 20, 2018. The case involves a now-former employee who, the IG concluded, violated the Ordinance by accepting gifts from a business over which he had official authority, in excess of the Ordinance's \$50 per source/per year limit, failed to report the gift on his annual Statement of Financial Interests, and provided advice or assistance on matters concerning City business that were not wholly unrelated to his City job. The matter is on the agenda for consideration of a probable cause finding.

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.

O. 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, and one (1) department head and one (1) former department head that their past conduct violated the Ordinance. In three (3) of these eight (8) 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.

As noted above, the Board received a completed investigative report from the IG on May 26, 2017, with a petition for a probable cause finding. The case was based on the Board's earlier conclusion that the subject appeared to have committed a past violation of the Ordinance that was not minor, and then advised the subject of the self-reporting-to-the-IG provisions in the Ordinance. After the IG investigated, and confirming the Board's earlier conclusion, the matter was settled for a \$1,500 fine. The agreement is posted on our website.

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.

P. Lobbyists-regulation and enforcement

There are currently 792 lobbyists registered with the Board. We have collected \$427,850 in fees for 2018.

Second quarter activity reports were due by July 20. We estimate that, to date, 90% of our lobbyists have filed. Late filers will be sent notices of probable cause in accordance with the timetable laid out in §2-156-270 of the Ordinance.

Q. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received two new requests under the Freedom of Information Act. The first was for statements of financial interests for 3 years for a department's commissioners and deputies. We provided those persons' names and the link to our website to locate each of their statements of financial interests. The second was for the names and email addresses in excel format of all current City employees. We provided Board staff's eight (8) names and corresponding email addresses, after consulting with the Law Department.

At 12:07 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade 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 guests were excused.

At 12:09 p.m., member Nancy C. Andrade joined the meeting.

At 12:10 p.m., member Dr. Daisy S. Lezama recused herself and left the room prior to consideration of the next matter.

At 1:15 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem, and Stephen W. Beard, absent) to reconvene into open session, and the guests were invited to return.

MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

IV. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in executive session, VOTING 6-0 (Nancy C. Andrade, absent) in open session, to approve the executive session minutes, of the June 15, 2018 meeting.

V. CASEWORK

A. Query Summary

1. Case No. 18027.Q, Post-Employment

The Board VOTED 5-0 (Zaid Abdul-Aleem, and Stephen W. Beard, absent) to approve staff's advice that: (i) a former City employee who wished to serve as a volunteer for the employee's former City department was advised that the one-year subject matter prohibition still applies: the Ordinance makes no distinction between those who would volunteer to work on transactions involving the City in which they were personally and substantially involved versus being paid for such work; (ii) "transaction involving the City" means the business of the City department, not just contracts for good or services in which money trades hands; and (iii) there is no right to volunteer for one's former City department, and that the only way this could occur would be if the City seeks the former employee's services and there is a written independent services contract between the former employee and the City, obligating the former employee to a fiduciary duty only to the City, and the employee is not employed by or an agent of any third party.

B. Board Consideration after Issuing Probable Cause Finding to the Respondent Pursuant to §2-156-385(4) of the Governmental Ethics Ordinance

2. Case No. 18012.IG, Post-Employment

The Board continued to discuss what it previously concluded were apparent violations of the Ordinance. Daisy Lezama recused herself from the discussion. The Board did not vote on the matter, but authorized the staff to discuss settling the matter with the respondent's counsel and agreed to further discuss the matter at its October meeting.

VI. NEW BUSINESS

1. Discussion and approval of the Board's proposed input to a draft version of a "handbook" for the use of Aldermen and their staffs.

Staff reported on the progress of this project. The Board of Ethics submitted its content on August 8. Other content is being supplied by the Law Department, Inspector General, and Department of Finance. It is a very worthy project, being developed under the sponsorship

of Alderman O'Connor. It will address things like the proper use of social media (both official city and political sites), use of City funds (what can these be used for/not used for), what the guidelines are on starting or contributing to "Go Fund Me campaigns" plugging local business in ward newsletters, and other practical questions that arise in the running of Ward offices. The Executive Director will circulate the entire draft document to the Board members for their comments. A representative from the IG present at the meeting said that his hope is to have a finished product by the end of September.

2. Report to Board with respect to proposed ethics reform plans.

Staff advised that it is closely following any plans announced by Mayoral candidates regarding ethics reforms. As we did in 2011 when Mayor Emanuel took office, staff will collate its running wish-list of desired amendments to the Governmental Ethics Ordinance and present them to the Board for discussion, ultimately for submission to the new Mayor early on in his or her term.

3. Discussion regarding outside employment of Chicago Police personnel

Staff reported that it is closely following discussions that might lead to an amendment of the Municipal Code that would explicitly allow CPD members to "moonlight" as security guards for local businesses. Staff has conducted extensive research on how other large U.S. cities and their ethics commissions have approached this issue. The Chair explained that the Board's goal here is to help the City ensure that – if this is the direction it goes – it's done in a way that satisfies and conforms to the requirements in the Governmental Ethics Ordinance. Staff answered questions from a representative of the IG regarding the status of any ordinance that may have been submitted to City Council.

VII. OTHER BUSINESS

None

At 1:28 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem, and Stephen W. Beard, absent) to adjourn the meeting.