

# **BOARD OF ETHICS**

## **OPEN SESSION MINUTES** **SEPTEMBER 13, 2019, 12:20 P.M.** 740 North Sedgwick, Suite 500

### **BOARD MEMBERS PRESENT**

William F. Conlon, Chair  
Dr. Stephanie Cox-Batson  
David L. Daskal  
Hon. Barbara McDonald

### **STAFF PRESENT**

Steven I. Berlin, Executive Director  
Lisa S. Eilers, Deputy Director  
Richard Superfine, Legal Counsel  
Edward Primer, Program Director  
Pully Casillas, Staff Administrator

### **BOARD MEMBERS ABSENT**

Zaid Abdul-Aleem  
Nancy C. Andrade  
Dr. Daisy S. Lezama

### **GUESTS ATTENDING**

A.D. Quig, Crain's Chicago Business  
Heather Cherone, The Daily Line  
Amelia Diehl, City Bureau  
Juan Perez, Chicago Tribune

The guests, Board and staff introduced themselves.

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

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of July 19, 2019. There was no August meeting.

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

For the sake of the guests present, the Chair described what would happen during the meeting, and explained that the Board and its staff work very hard to ensure that the City's ethics laws are enforced. Specifically, when information comes to the Board that shows, on its face, that someone subject to the laws appears to have violated them, and no factual investigation by the Office of Inspector General is needed, the Board will take action to enforce the law, determine violations and impose sanctions as appropriate, while affording the subjects due process and an opportunity to explain to the Board why they believe the law was not violated.

### **III. MEMBERS' REPORTS**

None

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

**A. Amendments to the Ordinance**

As has been widely reported, amendments to the Governmental Ethics Ordinance were passed in late July by the City Council. They mainly (i) grant jurisdiction to the Office of Inspector General (“IG”) over all City Council committees and give the IG authority to audit these committees (a question raised at the Committee hearing was whether the IG could audit individual aldermen, a question to which I do not know the answer), and commence investigations with or without a complaint, and enable the IG to commence investigations based on anonymous complaints; (ii) enable the IG to work with the Law Department to enforce its own subpoenas; (iii) enable the IG to investigate ethics violations that occurred not more than five (5) years after the most recent alleged bad act, as opposed to two (2) years under current law; (iv) amend the definition of lobbyist so that a person who lobbies on behalf of any non-profit would need to register if compensated for this activity, or undertakes to lobby on behalf of any non-profit as a matter of professional engagement, even if *pro bono*, but would also enable the Board to waive the registration fees for lobbyists who are paid but lobby only on behalf of a single 501(c)(3) non-profit; (v) prohibit alderman and other City elected officials and employees from representing or deriving any income or other tangible benefit from the representation of persons in any judicial or quasi-judicial proceedings: (a) where the City is an adverse party; or (b) that may result in an adverse effect on City revenue or finances, or the health, safety, welfare or relative tax burden of any City residents; (vi) prohibit City employees and officials from deriving income from providing opinion evidence against the City; and (vii) raise the maximum fine for ethics violations (other than for late filing or late training or late lobbyist registration) to \$5,000, from the current \$2,000. (This Board had recommended, among many other things, that the maximum fines be raised to \$20,000.)

The IG provisions and penalty provision take effect on September 28; the representation provisions take effect on December 17, 2019, and the non-profit lobbying provisions take effect on January 1, 2020.

We are gearing up for a large educational initiative for the non-profit community (see below).

As to the Board’s own suggested amendments, they were published on May 30, and there have been several media accounts about them. The Mayor has said on several occasions that the current round of ethics amendments is not necessarily the last round of such amendments.

**B. Education**

**Classes and Other Presentations**

Since the Board’s last regularly scheduled meeting, 149 employees and officials have attended classes conducted here on July 18 and 23, August 8, 20, and 27, and September 10. 104 are scheduled for classes here on September 19 and 26, and October 8 and 17.

All Board classes cover sexual harassment.

On July 25 and August 6, I presented classes to 1st Ward Alderman LaSpata and his staff and 40th Ward Alderman Andre Vasquez and his staff.

Classes for all other newly elected aldermen and their staff are being scheduled currently.

On August 20, I presented a class to the entire staff of the Office of the City Treasurer.

On August 21, at the request of the Mayor's Office and U.S. State Department, I made a 60 minute presentation to a group of visiting ethics and transparency specialists from Afghanistan, Antigua & Barbuda, Armenia, Belize, the Czech Republic, India, Kosovo, Liberia, Malawi, Mexico, Moldova, Nepal, Nigeria, North Macedonia, Pakistan, Romania, Slovenia, South Africa, Tunisia and Ukraine.

On September 9, I presented a class to Mayor Lightfoot and three (3) of her close aides.

On October 2, staff will present a class for staff of the Civilian Office of Police Accountability ("COPA"), at its Director's request.

On October 4, staff will present two (2) back-to-back presentations on the new lobbying registration requirements for non-profits, in conjunction with Forefront, an umbrella organization for non-profits.

I will also speak on campaign financing at the ABA's State and Local Government Section's Fall CLE Conference, in St. Paul, MN, on October 11.

On October 17, I will serve as a panelist on campaign financing and "pay-to-play" laws and potential reforms in a forum at Build Coffee, sponsored by the City Bureau/Public Newsroom.

On November 12, I will present a class to 39th Ward Alderman Samantha Nugent and her staff, and on November 14 to 33rd Alderman Rossana Rodriguez Sanchez and her staff.

We will conduct a class specifically on campaign financing and political contributions in late October for contract specialists in the Department of Procurement Services, at the request of the Chief Procurement Officer. That office has been helpful in identifying potential campaign financing law violations in the past.

### **On-line Training**

#### **For appointed officials**

We completed a PowerPoint for all appointed officials, including members of this Board, and will email it to all appointed officials, and have them complete it, with the Assistance of the Office of Legislative Counsel and Government Affairs (which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials).

#### **For all employees and aldermen**

This training is now also complete and we will go live with it on Monday, September 16. The Board will also set the due date for that training for a date certain in 2020.

## **C. New or Revised Publications**

### **Guide for Non-profits**

On July 31, we published two (2) guides to assist non-profit organizations in understanding the new lobbyist registration requirements that will take effect on January 1, 2020, including a guide on registering and fee waiver procedures.

**Guide to Aldermanic Recusals and “Rule 14” Disclosures**

On August 16, we published on our website and distributed to every alderman a guide addressing when they must recuse themselves from pending City Council matters by law, how to do that, and how to recuse from matters when not required by law to do so, that is, voluntary “Rule 14” recusals. The Board has publicly recommended to the Mayor and City Council that all such recusals be submitted to and published by this Board, which would then note which are required by law and which are voluntary.

**Appointed Officials Guide**

In conjunction with the Law Department and Mayor’s Office of Intergovernmental Affairs, we worked on updating the Ethics and Open Meetings Act Guide for Board and Commission Members. It had last been updated in 2013. It is published here: [https://webapps1.chicago.gov/moboco/resources/city-1.0/pdf/Ethics\\_Booklet.pdf](https://webapps1.chicago.gov/moboco/resources/city-1.0/pdf/Ethics_Booklet.pdf)

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

COGEL’s 2019 annual conference will be here in Chicago, at the Michigan Avenue Marriott from December 15-18. We are working 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 serve on the conference’s program committee, and have already reached out to various elected and appointed officials, attorneys, public figures, and media personnel to serve on panel discussions or otherwise contribute to the Conference. We will co-host the Conference with our colleagues at the Chicago Board of Election Commissioners, Illinois State Board of Elections, and Illinois State Executive Ethics Commission, and possibly other local agencies involved in ethics or freedom of information administration.

As President-elect of COGEL, I also serve on the Program and Host committees, and continue to Chair the Publications committee. The 2019 Conference is an opportunity to showcase our agency, our mission, our ethics, campaign financing, lobbying, and election administration colleagues at the City, County, and State levels. And I am hoping that our Board members will lend support to make the 41st Conference nonpareil.

**E. Executive Editorship – Public Integrity/Guardian Issue**

I am a member of 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 in the midst of a joint project between this journal and the COGEL Guardian to bridge gaps between academics and practitioners. The first edition of the 2019 COGEL Guardian was published on May 31, and the second on August 27. The next issue will be published around November 15.

**F. Consultations with County Personnel**

**Cook County Inspector General Personnel**

On July 24, I met with two officials from the Cook County Inspector General's Office, at their request. They have been detailed to assist the Metropolitan Water Reclamation District update its ethics policy and consider instituting a lobbyist registration policy. Our Education Director, Ed Primer, has also been in consultation with them to assist in these two projects.

#### **Cook County Board of Ethics**

Staff met with the newly appointed Executive Director of the Cook County Board of Ethics and his senior staff, at their request, on July 30, and then with the Chair and a Board member on August 13, also at their request. We discussed issues of common concern, including investigations, Open Meetings Act matters, coordination with our respective Inspectors General, advisory opinions, and our respective campaign financing provisions.

#### **G. Sister Agency Ethics Officers**

We will again meet on October 17 with our ethics counterparts at other local governmental agencies: the Cook County Board of Ethics and the Ethics Officers from the Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, the Cook County Assessor's Office, and Chicago Housing Authority.

#### **H. 2020 Budget**

We submitted our 2020 budget request, for \$866,740. This is \$142 below our 2019 appropriation. Because the 2020 COGEL Conference will be in Atlanta, and 2019's is here, we are asking for an increase in our travel appropriation, but were able to make up for that increase by decreasing other accounts.

#### **I. Office Furniture**

I'm pleased to announce that the Board received 24 chairs for the boardroom, replacing the old swivel/adjustable height chairs, which dated to 1998. The Law Department accepted a gift of about 800 chairs from the law firm of Holland & Knight, which the firm no longer needs, and graciously offered us these chairs, which we're all now sitting in.

#### **J. Advisory Opinions**

Since the Board's last meeting on July 19, we have issued 738 informal advisory opinions. The leading categories were, in descending order: Gifts; Travel; Lobbying; Post-employment; Outside Employment; Campaign Financing; and City Property.

The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; Mayor's Office; City Council; Department of Law; Office of the City Treasurer; Chicago Public Library; Department of Public Health; and Departments Aviation, Water Management, and Procurement Services.

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.

**K. 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 905 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.

**L. Waivers**

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted three (3), each involving a former City employee. By law, we make these waivers public.

**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). 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, 122 such matters (including one (1) on today's agenda), 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 49 such matters. Eight (8) of these matters have involved apparent campaign financing violations; 34 have involved unregistered or undisclosed lobbying.

**N. 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 nine (9) since July 1, 2013, the last of which is on today's agenda for final disposition) 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. It is updated 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 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 ethics investigations were commenced within two (2) 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 such 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>

There is one new IG matter, presented to us on September 4. It involves potential violations of the Ordinance's post-employment, prohibited conduct, confidential information, and conflicts of interest provisions. Staff will make its recommendation as to a preliminary probable cause finding at the Board's October 2019 meeting.

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 appears to have 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 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.

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 non-minor past violation of the Ordinance, then advised the subject of the self-reporting-to-the-IG provisions in the Ordinance. After the IG investigated and confirmed 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**

To date for 2019, there are 776 registered lobbyists. We have collected \$425,650 in lobbyist registration fees.

Second Quarter lobbying activity reports were due before Tuesday, July 23. On August 27, as required by law, we determined that one (1) lobbyist failed to file his report and thereby

violated the Ordinance. We posted his name and violation on our website. His fines continue at \$1,000 per day until he files.

Note that we discovered a recent glitch in the ELF (Electronic Lobbyist Filing) system, whereby the compensation reported by lobbyists for the second, third and fourth quarter is combined with compensation reported in previous quarters, and then posted erroneously into the public interface of the program, which is on a SOCRATA platform. We are working with the programmers at the Department of Innovation and Technology to fix this problem.

**Q. Freedom of Information Act**

Since the last regularly scheduled Board meeting, the office has received one new request under the Freedom of Information Act. The request was for all statements of financial interests filed by a board member of a sister agency, and the Board responded that it had not located any records responsive to the request.

**V. PUBLIC COMMENTS**

None

**VI. OLD BUSINESS**

None

**VII. NEW BUSINESS**

Discussion of Deadlines for Mandatory Annual Ethics Training

The Board and staff discussed moving the training deadline from December 31, 2019 to April 1, 2020, thereby giving all City employees and official more than six (6) months to complete the mandatory on-line ethics programs to be released next week.

At 12:20 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, 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 1:50 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to reconvene into open session.

*The guests returned to the open session of the meeting, accompanied by two more members of the public.*

## **MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION**

### **VIII. 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 July 19, 2019 meeting.

### **IX. CASEWORK**

#### **A. Meeting with Respondent after Probable Cause Notice Issued for Unregistered Lobbying**

##### **1. Case No. 19018.C.1, Unregistered Lobbying**

Having met with the Respondent and his attorney and heard their attempt to rebut the Board's probable cause finding that unregistered lobbying occurred several times in 2015, the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to determine: (i) Respondent engaged in unregistered lobbying in violation of §2-156-230 of the Ordinance, as he had not rebutted the finding that the facts available to the Board demonstrated he engaged in unregistered lobbying in several attempts to influence a City elected official on behalf of a client with respect to taking City action in both a legislative matter and an administrative matter; and (ii) pursuant to its authority set forth in §2-156-265(b)(3) of the Ordinance, the Board fined Respondent Twenty-five Thousand (\$25,000) Dollars for the violation.

#### **B. Advisory Opinion**

##### **2. Case No. 19027.A, Practice of Criminal Law by Aldermen, Fiduciary Duty**

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to approve the draft advisory opinion determining that the fiduciary duty provision of the City's Governmental Ethics Ordinance prohibits City Council members who are licensed attorneys from personally representing or receiving or deriving compensation or anything else of value from the representation by others of persons in traffic or criminal cases in which there is participation by Chicago Police Department personnel, as, for example, arresting officers, executors of search warrants, investigators, witnesses, or custodians of evidence.

**C. Consideration of Probable Cause for Violations of the Political Contribution Limits**

3. Case No. 19028.01.CF, Excessive Campaign Contribution
4. Case No. 19028.02.CF, Excessive Campaign Contribution
5. Case No. 19028.03.CF, Excessive Campaign Contribution

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to determine that there is probable cause to conclude that a company was doing business with the Chicago Park District when it contributed in excess of \$1,500 to the authorized candidate committees of two aldermen in two calendar years, thereby violating the Governmental Ethics Ordinance, and to direct staff to send notices of probable cause explaining that the committee and contributor have 10 days to effect refunds of the excess amounts or contest the Board's determination, and that if refunds are effected, the cases will be dismissed by operation of law, but if the findings are not rebutted successfully and no refunds are effected, that the Board would take further enforcement action.

*At 1:55 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to adjourn the meeting.*