

BOARD OF ETHICS

OPEN SESSION MINUTES

MARCH 15, 2019, 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
Hon. Barbara McDonald

STAFF PRESENT

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

BOARD MEMBERS ABSENT

Zaid Abdul-Aleem

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to approve the open session minutes, as amended, of the Board's meeting of February 22, 2019.

II. CHAIR'S REPORT

The Chair addressed a number items.

1. For future meetings, there should be a section of the agenda devoted to comments from individual Board members, and any member of the public who wishes to comment respectfully, to hear what is on the minds of members of the public both in terms of ongoing concerns, and potential changes to the law.
2. The Board intends to present a list and analysis of suggested amendments to the Governmental Ethics Ordinance to the new Mayor, once she takes office. Among topics to be considered: the status of the "Aspirational Code of Conduct," §2-156-005. Sub-sections of this provision that are meaningful should be codified and enforceable, and those that are not enforceable should simply be eliminated. To have an aspirational code weakens the Board of Ethics and conveys the impression that the standards embodied within the section are not to be taken seriously.
3. The concept of "fiduciary duty" should be expanded, in particular to cover situations where an alderman bullies a private business and engages in what could be called "thuggery," for example, the incident involving the Double Door. And, it could address civility: it is a complete embarrassment to the City, the City Council and all City public servants when one alderman calls another a "pile of sh*t" – should the Board simply leave it at that, and comment that it's offensive, or should there be a power, for example, to censure public officials for "conduct unbecoming?"

Board member David Daskal agreed, and said he believes that encouraging the public to comment and ask general questions of the Board and its staff at these meetings will greatly raise not only the agency's profile, but ignite greater and broader interest in the topics of conflicts of interests and other ethics-related areas.

III. **EXECUTIVE DIRECTOR'S REPORT**

At 12:10 p.m. Member Dr. Daisy S. Lezama joined the meeting.

A. **Amendments to the Ordinance**

One package of the Mayor's submitted amendments to the Governmental Ethics Ordinance was held up in the City Council's Rules and Ethics Committee earlier this week, on Tuesday, March 12. I briefed aldermen on the proposal on February 28 and March 7. My testimony at the March 12 committee meeting has been posted on our website. The Board can itself amplify some of the proposed changes, and submit others, when it wishes, after the run-off elections, when the new Mayor assumes her office.

However, as noted below, the other package, which was actually submitted four (4) months ago, passed unanimously. It does two things: (i) effective immediately upon passage, subjects the City's appointed officials to the same standards and section of the Ordinance regarding sexual harassment as elected officials; and (ii) beginning in 2020, pushes the filing deadline for most filers of Statements of Financial Interests to May 1 every year, rather than May 31.

The text of the first change was posted on our website that afternoon. The second will be posted sometime after June 1, 2019, so as to minimize confusion about this year's filing deadline, which remains May 31.

B. **Education**

Classes and Other Presentations

Since the Board's last regularly scheduled meeting, 42 employees attended classes here on February 26 and March 7. There are 92 scheduled for March 19 and 26, and April 9 and 16.

All Board classes cover sexual harassment.

On March 12, I made a 60 minute presentation to graduate students from the DePaul School of Public Health on ethics in organizations and government agencies.

On dates to be set, we will present classes for the aldermen and staff of the 2nd, 43rd and 38th Wards.

On-line Training

For appointed officials

We are finalizing a PowerPoint for all appointed officials, including members of this Board. Currently the sexual harassment section is being reviewed by the Department of Human Resources, which is revising the City's EEO Policy, and may include appointed officials within its

ambit. When the program is completed, we 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). An Ordinance was submitted to City Council, at our request, and at the request of the Mayor's Office, provide that all appointed officials are subject to the Ordinance's prohibition against sexual harassment. It was approved at the March 13 City Council meeting.

For lobbyists

The 2018-2019 lobbyist training program is being posted today.

For all employees and aldermen

We have begun drafting this training, but have delayed it, due to possible Ordinance amendments.

C. City Council Educational Initiative/Handbook

In conjunction with the Law and Finance Departments, Office of Inspector General ("IG"), and members and staff of the City Council, including representatives from its various caucuses, the Board met January 16 and February 27, March 27, April 16, and May 21, and attended briefings with aldermen on December 4 to finalize 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. The Board submitted its extensive comments and entries, covering topics from political activity to social media to recusals.

We submitted brief revisions to the Handbook on February 19.

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

COGEL's 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 current and next 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 are serving on the conference's program committee, and will be reaching 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.

On March 7 and 8, we had productive program meetings, and the program has largely been set. It will include two Chicago-centric breakout sessions. We are excited about it, and have extended invitations to several locally-based potential participants.

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 will be published around May 1, 2019.

F. Sister Agency Ethics Officers

We next meet on March 21 with our ethics counterparts at 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.

G. 2019 Statements of Financial Interests

On March 1, we sent filing notices to 3,688 City employees and officials (via email and U.S. first class mail) notices regarding their requirement to file their 2019 Statements of Financial Interests before June 1. This includes individuals identified by each Ward or alderman who fall into the definition in the Ordinance of “City Council employee” even though they are paid as independent contractors. To date, approximately 35% of required filers have completed their forms.

As of this writing, approximately 1,500 have filed, which is 40.6% compliance.

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

Note: part of the amendment package approved Wednesday by City Council is that, beginning in 2020, the deadline for filing Statements of Financial Interests will be pushed up to May 1, not May 31.

H. 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, 182 known qualified candidates (not including incumbents) for the February 2019 Consolidated Municipal Election have been notified to file, and all have done so. All candidates’ forms are posted on our website.

Note: incumbents also must file, but their forms are posted and searchable through a different page.

I. Advisory Opinions

Since the Board's last meeting on February 22, we have issued 281 informal advisory opinions. The leading categories were, in descending order: travel; gifts; City property (including proper website postings or blockings); campaign financing; Statements of Financial Interests; post-employment; and lobbying.

The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; City Council; Mayor's Office; Chicago Public Library; Department of Public Health; and Department of Law.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. (This is the same practice that 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.

J. 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 (902 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.

K. 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.

L. 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, 116 such matters, but only in those that occurred after July 1, 2013 can the Board release the names of those found to have violated the Governmental Ethics Ordinance.

The document makes clear that, despite comments made in the media over the last decade, the Board has been a robust enforcement agency, hardly 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.

M. 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 eight (8) 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 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 any 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 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 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 record of the hearing. The Board will then issue a public opinion in which it finds one or more violations of the Governmental 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 the Mayor’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 legal determinations as to whether a person investigated by the IG or LIG violated the Ordinance, given the Board's extensive jurisprudence and unique expertise in ethics matters; and (iii) to balance due process for those investigated by the IG with an accurate and precise adjudication by the Board of Ethics and the public's right to know of ethics violations.

On our website, we have a publication that describes this process in detail:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

One (1) of these eight (8) IG matters remain pending, and in two (2) others, the Board has settled the matters as to the primary subject, and commenced follow-up enforcement actions against secondary subjects. Specifically:

In Case No. 18039.IG (corresponding to IG Case # 17-0082), the final investigative report was sent to our office on November 30, 2018. The case involves prohibited gifts offered to a current and a now-former City employee from a City subcontractor. At the Board's February 2019 meeting, it determined that the subcontractor and current City employees committed minor violations. Staff sent a detailed explanation to the IG explaining the Board's determination. The Board found probable cause to conclude that the former City employee violated the Ordinance, and a subject meeting is scheduled for April.

In Case No. 18012.IG (corresponding to IG Case #16-0240) the IG presented the Board with a fifth completed investigation and petition for probable cause in April 2018. At the Board's May 2018 meeting, it dismissed one part of the IG's petition (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, finding 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), but made a *prima facie* finding of probable cause in the other. The matter involves violations of the Ordinance's post-employment provisions by a former alderman (the Ordinance's post-employment provisions prohibit former aldermen from engaging in lobbying the City for one year after leaving office). The Board settled the matter with the former alderman for a \$5,000 fine. At its January 2019 meeting, the Board also found probable cause to conclude that the former alderman's employer violated the Ordinance by employing a lobbyist who failed to register as required by the Ordinance. The employer is subject to a fine between \$500-\$2,000. That part of the case remains pending, and we are in settlement negotiations.

In Case No. 18023.IG (corresponding to IG Case #17-0148), 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 (and identified as a former Water Management employee), violated the Ordinance by accepting gifts to a Cubs' post-season game 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 Board made a *prima facie* probable cause finding at its July 2018 meeting, and settled the matter with the former employee for a \$500 fine. At its January 2019 meeting, the Board found that there is probable cause to conclude that the gift-giver violated the Ordinance by giving the former employee a prohibited gift. A subject meeting is scheduled for April 2019. The gift-giver is subject to a fine between \$1,001- \$5,000.

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.

N. Disclosures of Past Violations

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct, and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that he or she may self-report to the IG or, if he or she fails to do so within two (2) weeks, the Board must make that report.

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

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.

O. Lobbyists-Regulation and Enforcement

To date for 2019, there are 729 registered lobbyists. We have collected \$355,575 in lobbyist registration fees. First Quarter lobbying activity reports will be due on or before April 22. We will send out reminders of this deadline to all lobbyists via email on March 29.

P. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received one (1) request under the Freedom of Information Act. The requestor asked for a list of collection agencies with whom the Board worked; there being none, the requestor was advised that the request was directed to the wrong department.

IV. OLD BUSINESS

Discussion of pending amendments to the Municipal Code

The Executive Director reported that he testified on the Mayor's proposed changes to the Ethics Ordinance and Zoning Code at the March 12 meeting of the City Council's Committee on Committees, Rules and Ethics, and shared his opening remarks (which are also posted on the Board's website). Owing primarily to proposed changes to the zoning process – which would constitute a change in the application of “aldermanic privilege” – the proposal did not pass out of Committee. Some of the non-zoning changes in the proposal are far-reaching, albeit controversial, but were not brought to a vote. It is unknown at this time whether there will be another substitute ordinance presented by the Mayor.

V. NEW BUSINESS

None

At 12:24 p.m., the Board VOTED 6-0 (Zaid Abdul-Aleem, 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.

At 1:40 p.m., the Board VOTED 6-0 (Zaid Abdul-Aleem, absent) to reconvene into open session.

MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

VI. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in executive session, VOTING 6-0 (Zaid Abdul-Aleem, absent) in open session, to approve the executive session minutes, of the February 22, 2019 meeting.

VII. CASEWORK

A. Report on Status After Board's Finding of Probable Cause to Conclude a Person Misappropriated City-owned Property and Received and Improper Gift to a City Employee Pursuant to §2-156-142 of the Governmental Ethics Ordinance

1. Case No. 18039.IG, City-owned Property; Gifts

Staff reported that the subject is in the process of retaining counsel to handle this matter. In the interim, the subject opted to attend a meeting with the Board at its May 17 Board meeting.

B. Report on Status of Settlement Negotiations After Board's Finding of Probable Cause to Conclude a Person Employed an Unregistered Lobbyist Pursuant to §§2-156-305 of the Governmental Ethics Ordinance

2. Case No. 19008.C, City-owned Property; Prohibited Political Activity

By a 6-0 VOTE (Zaid Abdul-Aleem, absent), the Board determined that an aldermanic candidate violated §2-156-060 of the Ordinance by showing photographs on electioneering communications of the candidate wearing apparel that had the official City seal emblazoned on it, but that these communications constituted a minor violation of the Ordinance, considering the candidate's self-reporting of the circumstances and the placement of the City seal relative to the overall communications. The Board directed staff to issue a confidential letter of admonition to the candidate and work with the Chicago Police, Fire and Law Departments to issue guidance as to the use of Police and Fire department personnel, insignias and equipment in electioneering and other political communications.

C. Dismissed and Referred Complaints

3. Case No. 19013.C, City-owned Property

Staff reported that it had reviewed an aldermanic Twitter account after it received a complaint from an individual who had been blocked from following the account. Staff reviewed the account and concluded that the account was primarily political in nature.

Staff further reported that it had advised the alderman that City elected officials are not prohibited from deleting comments and/or blocking followers from "political" social media accounts and recommended that the alderman include a disclaimer on the account indicating that it is not an official Twitter account of the City.

4. Case No. 19014.C, City-owned Property

Staff reported that it had reviewed an aldermanic Twitter account after it was brought to staff's attention that the newsletter improperly mixed official City of Chicago business content and electioneering content.

Staff further reported that in a letter to the alderman who had put out the newsletter, it reminded the alderman that in its recent advisory opinion regarding social media use by

elected officials, the Board determined that political/campaign content cannot be posted to an official City social media account or included in a ward newsletter.

VIII. OTHER BUSINESS

None

At 1:42 p.m., the Board voted 6-0 (Zaid Abdul-Aleem, absent) to adjourn the meeting.