

BOARD OF ETHICS

OPEN SESSION MINUTES

MAY 14, 2019, 12:05 P.M.

740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
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
Paully Casillas, Staff Administrator

BOARD MEMBERS ABSENT

Nancy C. Andrade
Dr. Stephanie Cox-Batson

GUESTS ATTENDING

Benjamin Angel, Represent Us
Justin Bryant, Represent Us
Ben Goldsmith, Citizen
Robbie McBeath, Represent Us (Chicago Chapter)
Daniel Wolk, Represent Us

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Nancy C. Andrade and Dr. Stephanie Cox-Batson, absent) to approve the open session minutes of the Board's meeting of April 26, 2019.

II. CHAIR'S REPORT

The Board and staff have been working for months on a package of recommended ethics reforms, which we will make public as soon as possible after the Memorial Day weekend. They will be addressed to Mayor Lightfoot and all 50 City Council members. On behalf of the Board, I am pleased to present these; they represent decades of wisdom and experience, and include major changes to the fines for ethics violations and conflicts of interests rules. And, I hope that the momentum and desire for change that the Mayor-elect has heralded continues, and that the Board can participate fully in those efforts. The Board plays a unique role in ethics reform. The Board's enabling law gives it the power and duty to recommend legislative action deemed appropriate to effect the policy of the City's Governmental Ethics Ordinance.

In particular, one of the key changes is that the Board should have the ability to assess fines in amounts much greater than \$2,000. That ceiling has caused the Board to be unfairly and incorrectly mocked by editorial cartoonists, and gives the impression that ethics violations are treated lightly.

Equally importantly, I wish to thank those members of the public, some of whom are present today, for submitting thoughtful comments to our earlier drafts. They were invaluable.

III. **MEMBERS' REPORTS**

None

IV. **EXECUTIVE DIRECTOR'S REPORT**

A. **Amendments to the Ordinance**

Recent Ordinance amendments, effective May 29, do a number of things: (i) provide that if City Council committee chairs recuse as required by the Ethics Ordinance from more than four (4) distinct matters in a 12-month period, they must end the business relationship that gives rise to the recusal, or step down from their Committee chairmanships (Rule 14 disclosures not required by law do not count toward these four (4)); (ii) clarify long-standing Board-made law (see Case No. 00008.A, https://www.chicago.gov/dam/city/depts/ethics/general/AO_ConflictOfInterest/00008-AO-redact.pdf) that a City Council member may not preside as Chair or Vice Chair over any parts of City Council committee meetings from which he or she must recuse; (iii) require more detailed disclosure about matters from which a City Council member is recusing, such as the nature of the relationship giving rise to the recusal and when it originated; (iv) require continued amendment of one's filed Statement of Financial Interests to show new reportable interests within 30 days of such occurrence; and (v) extend the definition of those "seeking to do business with the City" and thus subject to the Ordinance's \$1,500 per calendar year/per candidate political contribution limit to those who have had certain types of specified matters pending before the City Council during the period six (6) months before the matter was introduced and after the matter was introduced.

We will publish the changes as they become effective.

As we will discuss soon in open session, the Board's own proposed amendments are lengthy and substantive, and we will vote on our draft, having solicited and received very fine comments from the public.

B. **Transition to the Lightfoot Administration**

I and two (2) staff members met on April 29 with members of the Mayor-Elect's transition team, who work for the Civic Consulting Alliance, to discuss ongoing projects and goals. On May 21, at the first scheduled cabinet meeting for the incoming Lightfoot administration, I was asked to do a brief ethics training – this is an important honor. I had given the incoming Mayor's Chief of Staff designate a copy of the Board's then-current draft of suggested amendments on April 16.

C. **Education**

Classes and Other Presentations

Since the Board's last regularly scheduled meeting, 20 employees and officials attended a class here on May 9. There are 61 scheduled for May 21 and 30 and June 11.

All Board classes cover sexual harassment.

On June 4, I will make a 30 minute presentation to the “Chi Hack Night,” which is a regular meeting of local computer programmers and app builders.

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 lobbyists

The 2018-2019 lobbyist training program is being posted today. To date, 335 have completed it, which is about 44.4% of the total. The deadline is before July 2.

For all employees and aldermen

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

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. On May 3 and 4, we had Steering Committee meetings.

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 31.

F. Sister Agency Ethics Officers

We will next meet on June 25 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. As of this writing, 2,877 have filed, which is 78% compliance. By law, notices will go out to all not-yet-filed persons on Thursday, May 16. We are in regular contact with our Ethics Liaisons in every City department and Ward office as to not-yet-filed individuals. The goal: 100% compliance: no violations.

Forms are posted on our website as soon as they are processed by staff – the 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.

All newly-elected officials must file before they take their oath of office on May 20, 2019. I distributed Statements of Financial Interests to all newly-elected aldermen at the orientation a few days ago, and we are working with LCGA to ensure that all newly-elected officials file on time.

H. Advisory Opinions

Since the Board's last meeting on April 29, we have issued 149 informal advisory opinions. The leading categories were, in descending order: travel; Statements of Financial Interests; Gifts; Post-employment; City property (including proper website postings or blockings); and lobbying.

The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; Mayor's Office (including the Lightfoot Transition Team); City Council; Department of Public Health; Department of Planning & Development; Chicago Public Library; and the Offices of Management and Budget and Inspector General ("IG").

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.

I. 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 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.

J. 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.

K. 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 4 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, including 4 from today. Eight (8) of these matters involved apparent campaign financing violations; 34 (including 4 from today) have involved unregistered or undisclosed lobbying, or late-filing lobbyists.

The document makes clear that, despite comments made in the media over the last decade, the Board has been a robust enforcement agency, though rarely acknowledged as such. 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.

L. 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 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 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 Ethics Ordinance (or finds none) and imposes 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 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>

Two (2) of these eight (8) IG matters remain pending. In each, the Board settled the matters as to the primary subjects, 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 employee 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 the Board's June meeting.

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 believed, 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 meeting with the business-owner gift-giver is scheduled for today. The gift-giver is subject to a fine between \$1,001 - \$5,000.

There are no other pending investigations from the IG.

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.

M. 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 the 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, and the Board's current draft of Ordinance changes would require the IG to make such reports to the Board, confidentially.

N. Lobbyists-Regulation and Enforcement

To date for 2019, there are 754 registered lobbyists. We have collected \$385,875 in lobbyist registration fees.

First Quarter lobbying activity reports were due on or before April 22. We sent out reminders of this deadline to all lobbyists via email on March 29. On April 24, as required by law, we notified the 28 lobbyists who had not yet filed. One (1) lobbyist was determined to have violated the Ordinance for failure to file by the deadline, and his name and violation were posted on our website on May 9. He filed before the time in which fines would be imposed, so he was not fined.

O. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received one (1) new request under the Freedom of Information Act. The request was for help regarding unsafe conditions at a property within the City. This agency responded that it was not the correct department from which to request records and had no responsive records.

V. PUBLIC COMMENTS

Daniel Wolk, from Chicago Documenters, thanked the Board for allowing the public the opportunity to comment on the proposed ethics amendments, and stated that one of his concerns, which he understands the Board has addressed, is that real estate developers exert influence through campaign contributions that is out of balance.

VI. OLD BUSINESS

Approval of Board-proposed amendments to the City's ethics laws

The Executive Director reiterated that the Board's statutory power and duty is to recommend legislative changes, and is proud to do so now, as it did eight (8) years ago when the Emanuel Administration began. Many of the Board's suggestions made at the time were picked up by the Ethics Reform Task Force, and then codified it into the Governmental Ethics Ordinance. We hope that continues, and appreciate the opportunity to assist the Mayor and City Council.

VII. NEW BUSINESS

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

The Board will consider in executive session staff's recommendation with respect to continued confidentiality of executive session minutes pursuant to the Illinois Open Meetings Act.

At 12:20 p.m., the Board VOTED 5-0 (Nancy C. Andrade and Dr. Stephanie Cox-Batson, 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, 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 1:43 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Stephanie Cox-Batson, absent) to reconvene into open session.

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. Stephanie Cox-Batson, absent) in open session, to approve the executive session minutes, of the April 26, 2019 meeting.

IX. NEW BUSINESS

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

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Stephanie Cox-Batson, absent) to approve continued confidentiality of the executive session minutes of the Board.

X. OLD BUSINESS

Approval of Board-proposed amendments to the City's ethics laws

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Stephanie Cox-Batson, absent) to approve the package of suggested amendments to the City's ethics laws with two alterations: (i) the maximum fine for substantive violations other than campaign financing, training, late filing, and late lobbyist registration be set at \$20,000, not \$5,000 or \$10,000, as in previous drafts; and (ii) the suggested amendment to the campaign contribution provision (§2-156-445(a)), should subject real estate developers to the Ordinance's \$1,500 per candidate/per calendar year contribution limitation for one full year after their matters receive final approval from the last City body or department whose approval is required, not for just six (6) months after that final approval, as in previous drafts.

XI. CASEWORK

A. Board Meeting with Respondent Gift-Giver Pursuant to §2-156-385(3) of the Governmental Ethics Ordinance after Issuance of Probable Cause Finding

1. Case No. 18023.IG.2, Gifts

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Stephanie Cox-Batson, absent), after meeting with respondent and his attorney, to sustain a finding of probable cause against the respondent. The Board determined that, at this stage in the proceeding, the evidence showed that the respondent violated the Ordinance's Gift and Other Favors provision, §2-156-142, by giving a prohibited gift to a City employee. The Board voted to seek to settle this matter by imposing the minimum \$1001 fine, pursuant to §2-156-385(4) and Board Rule 4-1(d).

B. Potential Issuance of Probable Cause Notices

2. Case No. 19018.C.1., Unregistered Lobbying

3. Case No. 19018.C.2., Unregistered Lobbying

5. Case No. 19018.C.4., Unregistered Lobbying

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Stephanie Cox-Batson, absent) to find that there is probable cause to conclude unregistered lobbying occurred in these three cases and, accordingly, to issue notices of the Board's findings of probable cause.

6. Case No. 19018.C.3., Unregistered Lobbying

The Board VOTED 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Stephanie Cox-Batson, absent) to find that there is no probable cause to conclude unregistered lobbying occurred in this case and, accordingly, to dismiss and close this case.

XII. OTHER BUSINESS

None

At 1:55 p.m., the Board voted 4-0 (Zaid Abdul-Aleem, Nancy C. Andrade and Dr. Stephanie Cox-Batson, absent) to adjourn the meeting.