

# BOARD OF ETHICS

## Open Session Minutes

DECEMBER 14, 2020, 3:04 P.M.

740 North Sedgwick, Suite 500

### **BOARD MEMBERS PRESENT**

William F. Conlon, Chair  
Nancy C. Andrade  
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  
Ana Collazo, Attorney/Investigator  
Edward Primer, Program Director  
Pully Casillas, Staff Assistant

### **BOARD MEMBERS ABSENT**

Zaid Abdul-Aleem  
Dr. Daisy S. Lezama

### **GUESTS ATTENDING**

Heather Cherone, WTTW

*The meeting was convened and conducted through the use of the Zoom remote video and audio meeting platform.*

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

The Board VOTED 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of November 16, 2020.

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

The Chair once again thanked the entire staff for its efforts during the Covid era. He asked the Executive Director to give the Board an update on the various lawsuits involving the Board. The Executive Director then explained that: (i) in *Johnson v. City* (which challenges the constitutionality of the ban on elected officials from other jurisdictions from lobbying the City, in §2-156-309), the City has moved to dismiss the plaintiff's motion for a preliminary injunction; (ii) in *Jason Lee v. City* (which challenges the constitutionality of the one-year post-employment subject matter ban), the City has also moved to dismiss the plaintiff's motion for a permanent injunction; and (iii) in the arbitration brought by the Policeman's Benevolent and Protective Association (PBPA), the Executive Director will testify on February 11, 2021. That grievance alleges that members of the PBPA were improperly denied "counsel of their own choosing" when Mr. Lee was told he could not represent three PBPA members in interrogations in ongoing investigations being conducted by the Civilian Office of Police Accountability (COPA).

### **III. MEMBERS' REPORT**

None

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

**A. Amendments to the Ordinance**

1. On December 18, 2019, the City Council voted into law several amendments to the Governmental Ethics, which this Board played a role in drafting. These took effect on April 14, 2020, and prohibit City elected officials from acting as lobbyists on behalf of private clients before any other government unit in the State, or from receiving compensation or income from such lobbying by others and prohibit elected officials from any other jurisdiction from acting as lobbyist on behalf of private clients before Chicago government. As was widely reported, after I testified before the City Council's Committee on Ethics and Government Oversight, that Committee unanimously voted down a proposed amendment submitted to City Council in April (which, due to City Council Rule 41, was granted a committee hearing on October 13) that would have effectively relaxed this latter prohibition by limiting the prohibition to elected officials from jurisdictions that have "pending or recurring legislative or contractual matters involving the City." The one affected lobbyist was notified that he must comply with the law, and did, on October 21, by resigning his elected position with a unit of local government elsewhere in Illinois.
2. Implementation of the non-profit lobbying provisions (also passed on July 24, 2019) was delayed to at least January 1, 2021, and more likely to April 1, 2021. We continue to work with the Mayor's Office and members of the non-profit community on potential amendments.
3. There will be more discussion in closed session of potential actions relating to the procedures covering chapter 2-156 (Governmental Ethics Ordinance) investigations completed by the Office of Inspector General ("IG").

We have on our website a color-coded version of the Ordinance showing all changes made since January 2018. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/Ordinances/GEO-2019-color%20through%20June%202020.pdf>

**B. Education**

**Classes and other presentations**

We cancelled all classes from March 17 on. Of course, given the course of the pandemic, we are unsure when we will be able to resume but are working to come up with a plan to move to virtual classes. We have extended all training deadlines accordingly. All Board classes and educational programs cover sexual harassment.

On December 3, we gave a 60-minute virtual training to the entire staff of the Department of Business Affairs and Consumer Protection, at the request of its Commissioner.

**On-line Training**

*For appointed officials*

To date, all but 45 appointed officials have completed the new annual training for appointed officials. We are not going to enforce deadlines for this year's training, due to the Covid-19 pandemic. We are grateful for the assistance of the Mayor's Office of Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

All but 4 employees completed the 2019 program, and they are in progress. For the 2020 program, 3,535 employees and three (3) aldermen have completed it to date, and 79 employees and officials are currently in progress. We extended the deadline to July 1, 2021.

For lobbyists

To date, 343 lobbyists have completed the all-new annual on-line training, which is 40% of the total. Lobbyists will have until March 1, 2021 to complete it.

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

As the now immediate Past President of COGEL, I can report that the virtual conference in December continues, and we have a record number of attendees: more than 650 individuals. The schedule is:

The following pre-recorded sessions will be approximately one hour long and will be available on-demand on the COGEL website throughout the month of December:

- Ethics Update (combined into one 60-minute session this year) (I and the Executive Director of the Ohio State Ethics Commission do this session every year)
- Elections Update
- Enforcement Update
- Campaign Finance Update (combined into one 60-minute session this year)
- Lobbying Update
- FOI Session
- Professional Development Session (Communication and Diversity)

The live COGEL sessions this year are as follows:

December 1, 2020 3:00 PM ET

**President Welcome / Plenary Session**

December 8, 2020 3:00 PM ET

**Annual Business Meeting**

December 15, 2020 3:00 PM ET

**Awards Presentation / Networking Event / 2021 Conference Announcement – Denver, CO**

**D. Sister Agency Ethics Officers/Lobbying Assistance to CPS**

The next meeting of the ethics officers from the other local governmental agencies will be in February: these are our colleagues from the Cook County Board of Ethics, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, the Cook County Assessor’s Office, and Chicago Housing Authority).

Please note that we are working with personnel from the Chicago Public Schools to assist them in implementing a lobbying policy. We may modify our ELF program to include lobbyists registered with the CPS.

**E. Chicago Casino, the Board's Work per the Illinois Gambling Act**

As was reported in the media, on October 25, 11 firms responded to the City's RFI (request for information) regarding interest in placing and operating a casino in Chicago. This has triggered reporting requirements, to the Illinois Gaming Board, of City employees and officials who have "communications" with "applicants" regarding "gaming" under the Illinois Gambling Act, 230 ILCS 10/1 et seq. Further, once a casino operator is identified, other requirements under the substantive ethics provisions of that state statute will take effect. Penalties for violating this law are severe: it is a Class 4 Felony under Illinois law, subjecting the violator to fines up to \$25,000 and 1-3 years in jail.

Board staff has been working closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City officials and employees are informed of these reporting (and eventually, substantive ethics) requirements and prohibitions. There have been multiple briefings with City Council members and their senior staff. Later briefings with City departments and boards and commissions that explain these laws and requirements may occur in 2021.

**F. Advisory Opinions**

Since the Board's last meeting on November 16, we have issued 251 informal advisory opinions. The leading categories for informal opinions were, in descending order: Gifts; Lobbying; City Property; Conflicts of Interests; Post-Employment; Campaign Financing; and Whistleblower Protection.

The leading City departments from which requesters came in this period were, in descending order: City Council; Mayor's Office; Department of Law; Police Department/Civilian Office of Police Accountability (COPA); Office of the Treasurer; and Department of Cultural Affairs and Special Events.

So far for 2020, the Board has issued 3,156 informal and 11 formal opinions, including one (1) to be issued today.

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 note also that the office has seen a marked increase in inquiries from citizens since the beginning of the pandemic. Some of these result in complaints, which we then refer to the Office of Inspector General. We do not have authority to issue advisory opinions to members of the public unless they are personally involved in the specific situation about which they inquire.

**G. 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 910), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. 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.

#### H. Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted seven (7) and denied two (2). By law, we make all granted waivers public on our website.

#### I. 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, 126 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 54 such matters.

#### J. Summary Index of Ongoing IG/LIG Investigations/Adjudications

There are currently no completed IG investigations awaiting adjudication.

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 eleven 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. We update it 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 completed 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 five (5) years 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 former 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>

Note: the fines range from \$500-\$2,000 per violation for non-lobbying law violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for violations occurring after that.

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.

#### **K. 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, two (1) mid-level City employees, 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.

In the four (4) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance.

**L. City Council Handbook**

The project of completing a handbook for the operations of aldermanic offices has been resurrected. We updated the content for which we are responsible and submitted it this week. We do not know when the final product will be released, or which aldermen will shepherd it. Previously, the role of shepherding this work fell with former 40<sup>th</sup> Ward Alderman Patrick O'Connor.

**M. Litigation**

Lee v. City of Chicago. On June 26, the City was served with a lawsuit, filed in Cook County Circuit Court, Chancery Division, by a former City employee of the Civilian Office of Police Accountability (COPA). The case is *Jason W. Lee v. City of Chicago*, 2020 CH 04524. The plaintiff left City employment on February 28, 2020 and works as an attorney for the Policemen's Benevolent and Protective Association. His suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague, and that the City is improperly attempting to regulate the practice of law by Illinois attorneys. It asked for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. After the matter was briefed by both sides, on July 31, the Honorable Anna Demacopoulos denied the plaintiff's request for a temporary restraining order. The plaintiff was granted leave to file an amended complaint, and filed one, adding an as-applied constitutional challenge. The City has filed its brief to dismiss the entire matter, the plaintiff filed his responsive brief, and the City's sur-reply brief is due December 18. After that, the Judge will schedule oral argument on the City's motion.

Johnson v. City of Chicago. On October 14, an elected member of the Library Board of Wilmette (a "unit of local government" in Illinois), sued the City in U.S. District Court. The case is *Dan Johnson v. City of Chicago*, No. 1:20-cv-06119. The plaintiff asks the court for a preliminary injunction preventing the City from enforcing the "cross-lobbying" ban, §2-156-309, on the basis that it violates his rights of free speech and association under the First Amendment of the U.S. Constitution. The City has moved to dismiss the suit on the basis that the plaintiff has no standing and has filed its brief in response to the motion for a preliminary injunction. The case is assigned to Judge John Robert Blakey and Magistrate Judge Sheila Finnegan.

**N. Lobbyists-regulation and Enforcement**

To date for 2020, there are 858 registered lobbyists – another all-time high – and we have collected \$434,000 in lobbying registration fees. This represents ~49% of our budget request for 2021.

Q3 activity reports were due by October 20, 2020. As required by law, on November 30, we found 11 lobbyists in violation of the Ordinance, after providing them proper due process and notice of their lateness. Three (3) filed before the date on which the Board could assess fines, but the remaining eight (8) are subject to fines of \$1,000 per day until they file (to date, one (1) has paid). However, two (2) lobbyists of these eight (8) solely on behalf of a single non-profit, and the Board waived their fines, as we announced over the past year that we would.

**O. Freedom of Information Act**

Since the last Board meeting, the Board has received eleven (11) new requests for records.

The first was for records of communication between a lobbyist and the Board and others on an Ordinance provision; records were located and provided to the requestor.

The second was for records sufficiently demonstrating ethical ramifications of employee advice; the requestor was advised we had no responsive records.

The third was for records of complaints filed with the Board; the requestor was advised that such records may not be disclosed pursuant to the Board's legislative obligations of confidentiality.

The fourth was for a record(s) of complaints filed with the Board that did not disclose confidential information; the requestor was sent links to our public records of filed/adjudicated complaints.

The fifth was for records addressing a circuit court lawsuit; the requestor was advised we had no responsive records.

The sixth was a City-wide request for 6 items dealing with other government units, unknown litigation, Roe v. Wade, Chris Rock and Planned Parenthood; the Law Department drafted a response, which we sent.

The seventh was a duplicate of the sixth.

The eighth was for an identification number for an IG case; the requestor was advised that we were the wrong department.

The ninth was a City-wide request for nine (9) record categories, summarized: dealing with other government units, a non-profit, tests performed on a decedent, complaints filed by the decedent with another government unit, Roe v. Wade in Missouri, Planned Parenthood and abortion; the Law Department drafted a response; the requestor is appealing to the Public Access Counselor, and the Law Department is handling that.

The tenth was for records addressing an alderman's open zoning change meeting; the requestor was advised we had no responsive records.

The eleventh was for a list of voters and similar information related to the November 3, 2020 election; we advised the requestor that we were the wrong department.

## **V. PUBLIC COMMENTS**

None

## **VI. OLD BUSINESS**

1. Status after Following-up Formal Notifications and Recommendations to City Officials based on Communications from the Office of Inspector General to the Board and Others
2. Status of Ongoing Litigation involving provisions of the Governmental Ethics Ordinance

The Board will discuss these matters in Executive Session.

## **VII. NEW BUSINESS**

None.

At 3:09 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem 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, 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 sole member of the public was asked to leave the Executive Session of the meeting and advised she would be invited into the reconvened Open Session of the meeting.*

*At 4:15 the Board VOTED 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The member of the public was invited to rejoin the Open Session.*

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

### **I. APPROVAL OF THE EXECUTIVE SESSION MINUTES**

The Board confirmed its discussion in Executive Session, VOTING 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama and the Hon. Barbara McDonald, absent) in Open Session, to approve the Executive Session minutes of the November 16, 2020 meeting.

*Member Hon. Barbara McDonald joined the remote meeting immediately after the vote.*

### **II. CASEWORK**

#### **A. Status Report on Remaining case after the Board Made Probable Cause Finding re Violation of §2-156-445(a) of the Governmental Ethics Ordinance Based upon Publicly Available Documents**

##### **1. Case Nos. 20026.CF.1 and 20026.CF.2, Campaign Financing**

The Board VOTED 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to direct staff to prepare and send a letter to both parties stating: (i) the next meeting of the Board is January 11 2021; (ii) by that date the parties may either attend the meeting or respond in writing in order to attempt to rebut the Board's finding of probable cause that there was an excessive campaign contribution violation; and (iii) that if neither occurred, at that meeting, the Board will take appropriate enforcement action.

**B. Advisory Opinion**

2. Case No. 20029.A, City-owned property

The Board VOTED 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to direct staff to issue an advisory opinion to a City elected official regarding the unauthorized use of City property. The Board also VOTED 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to direct staff to deliver a copy of the advisory opinion to the City's Corporation Counsel and the City's Inspector General in order for those offices to consider the Board's determinations and recommendations.

**C. Consideration of Subject's Responses to Board's Probable Cause Finding Based Upon Publicly Available Documents and Board's Possible Finding of a Violation re §2-156-020 of the Governmental Ethics Ordinance**

3. Case No. 20036.C, Fiduciary Duty

Based on publicly available documents, the Board voted unanimously at its November 16, 2020 meeting to determine there was probable cause to conclude that a sitting alderman, a licensed Illinois attorney, may have violated the Ordinance's fiduciary duty provision, §2-156-020, by filing an appearance on October 29, 2020 to represent a client in a criminal case pending in the Cook County Circuit Court, as the case is one in which Chicago Police Department (CPD) members were the arresting officers and will be material witnesses. This was in direct contravention of an advisory opinion the Board issued to the Alderman in September 2019 and of the Board's denial to change its opinion after the subject asked for reconsideration of that opinion in October 2019.

The Alderman was informed on November 16, through his attorney of record, that he was entitled to meet with the Board on December 14, and/or present written arguments and materials to attempt to rebut the Board's probable cause finding or provide evidence to the Board that he had withdrawn his appearance in this case and any other criminal cases involving CPD members as arresting officers, material witnesses, etc., in which he began representing the clients on or after October 19, 2019. But the Alderman did none of these things, and never responded to the Board's probable cause finding, although the Alderman's attorney of record acknowledged receipt of the Board's probable cause notice, and an attorney identifying herself as associated with this same law firm spoke at length with Board staff about the probable cause finding and the Alderman's rights thereunder. The Board voted 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to determine that the Alderman is in violation of the Ordinance and to fine him \$5,000, the maximum fine for this violation. The Alderman may appeal the Board's decision to an appropriate court.

**D. Dismissed and Referred Complaints**

4. Case No. 20037.C, Prohibited Political Activity/Misappropriation of City Resources

Staff reported that the Office of Inspector General ("OIG") referred this case to our office after they declined to investigate an allegation that a City employee used their position with the City in a campaign for elected office. After reviewing the materials the OIG forwarded, staff concluded that this case required a factual investigation and referred the case to the Bureau of Internal Affairs of the City department where the employee works for any action deemed appropriate.

*At 4:33 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem and Dr. Daisy S. Lezama, absent) to adjourn the meeting.*