

BOARD OF ETHICS

OPEN SESSION MINUTES **DECEMBER 6, 2019, 12:04 P.M.** 740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

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

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
Dr. Daisy S. Lezama
Hon. Barbara McDonald

GUESTS ATTENDING

Heather Cherone, The Daily Line
Jacob Zerkle, Quarles & Brady
Georgia Logothetis, Common Cause Illinois

I. APPROVAL OF MINUTES

The Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, absent) to approve the open session minutes, as amended, of the Board's meeting of October 29, 2019.

II. CHAIR'S REPORT

III. MEMBERS' REPORTS

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Amendments to the Ordinance and Potential Legislative Action in Springfield and Elsewhere

On December 4, a bill was passed by the City Council's Committee on Ethics and Government Oversight (O2019-8541). It will be presented to the full Council for a floor vote at its next meeting on December 18. If passed, it would take effect in the Spring of 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.

- require City employees and officials who file annual Statements of Financial Interests with the Board of Ethics to disclose the names of relatives who are registered as lobbyists not only with the City (which is current law), but also with the Secretary of State, or with the Cook County Clerk, or in any other local unit of government in Illinois.
- prohibit elected officials of any other unit of government within the State of Illinois from lobbying the City of Chicago or any of its officials, employees, agencies, departments, boards or commissions.
- the amendment does not prohibit or inhibit government officials or employees from lobbying on behalf of their constituents, or from performing their official governmental public responsibilities (activity that could be considered “lobbying” in some jurisdictions), nor impinge on the practice of law by legislator-attorneys.

One more piece of the ethics legislation that was passed into law on July 24, 2019 becomes effective on December 17: it prohibits 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.

The non-profit lobbying provisions also passed on July 24 and take effect on January 1, 2020. Staff is working closely with the Mayor’s Office and City Council to address concerns expressed by various non-profit groups about the details of the law. There is angst within the non-profit community about this law. At this point, a potential delay in the implementation or enforcement of these provision is being talked about; this would afford the Board more time to consider these concerns in formulating its Rules and Regulations.

We have posted on our website a color-coded version of the Ordinance showing all changes made since January 2018.

This is indeed a heady time to be in the profession of ethics and lobbyist regulation. We are following developments in Springfield and around the State. As you may know, the Governor signed SB 1639 into law on December 4: <http://www.ilga.gov/legislation/publicacts/101/PDF/101-0595.pdf>. the bill passed through the City Council’s Committee on Ethics and Government Oversight in that it would simply require registered lobbyists to disclose other units of government in the State before which they lobby, and any elected or appointed public office held by the registrant. The Governor is also in the process of appointing a bipartisan ethics committee of General Assembly members to reform State ethics and lobbying laws. I anticipate being called to testify before that committee, and of course would be honored to do so.

And the City of Elgin is considering an ethics and lobbying ordinance modeled on our own: <https://www.dailyherald.com/amp-article/20191205/news/191209465/>

B. Education

Classes and Other Presentations

Since the Board's last regularly scheduled meeting, 101 employees and officials have attended classes conducted here on November 5, 14 and 19 and December 3. 77 are scheduled for classes here on December 19 and January 7 and 16.

All Board classes cover sexual harassment.

On October 30, we made a 90-minute presentation to 22 non-profit CEOs, all members of the CACE (Chicago Alliance for Collaborative Effort), at the request of CACE's current Chair.

On November 12 and 22, we presented classes to two new aldermen and their staff, 39th Ward Alderman Samantha Nugent and 33rd Ward Alderman Rossana Rodriguez Sanchez, respectively.

On November 20, I presented a class to the members of the Board of Health, at the request of its Chair.

On December 2, we made a 90-minute presentation to 125 personnel from various non-profit organizations on the new lobbying laws, at the request and with the assistance of Forefront, an umbrella organization of non-profits. We will make another such presentation on December 19.

On December 9, 10, 11 and 20, we will make a total of four (4) presentations to other City staff on the new lobbying law.

On January 10, I will make a presentation to the Chicago Bar Association's Election Law Committee, at the invitation of its Chair.

On-line Training

For appointed officials

The PowerPoint for all appointed officials, including members of this Board, will be sent out in early January and appointed officials will have until May 1 to complete it. We are grateful for the assistance of the Office of Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, approximately 16,325 employees and 3 aldermen have completed the program. 220 are in progress. This represents approximately 56% of the total required to complete the training before April 1, 2020.

C. 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 have been working closely with the Mayor's Office to ensure a successful conference. We expect a record attendance of 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 are co-hosting the Conference with our colleagues at the Illinois State

Board of Elections. I am pleased to announce that our Chair, Bill Conlon, will welcome the attendees at a reception on Sunday evening, December 15, and Mayor Lightfoot will address the attendees in a plenary session on Monday, December 16.

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.

D. 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 third issue was published on November 20.

E. Sister Agency Ethics Officers

On February 6, we will have our next meeting 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.

F. 2020 Budget

Our budget allocation for 2020 is \$873,629. This represents a .008% increase over our 2019 allocation. We had our budget hearing on November 1.

G. Advisory Opinions

Since the Board's last meeting on October 29, we have issued 486 informal advisory opinions. The leading categories were, in descending order: Lobbying; Gifts; Travel; Conflicts of Interest/Improper Influence; Outside Employment (including outside volunteer service); Post-employment; and City Property.

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; Department of Public Health; Department of Transportation; Department of Innovation & Technology/Fleet and Facilities Management; and Planning & Development.

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.

H. 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 906 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.

I. 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.

J. 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, 125 such matters (including three (3) 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 53 such matters.

K. 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 a finding of probable cause) 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 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>

On October 18, the IG presented us with a new matter, involving an investigation of an alderman for potential violations of the Ordinance provisions covering political activity and the unauthorized use of City property. This case is on today’s agenda for a consideration of a probable cause finding. Another IG case is also on today’s agenda for discussion of potential settlement. That case involves potential violations of the Ordinance’s post-employment, prohibited conduct, confidential information, and conflicts of interest provisions.

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.

L. 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.

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.

M. Lobbyists-Regulation and Enforcement

To date for 2019, there are 806 registered lobbyists. We have collected \$463,925 in lobbyist registration fees—representing just over 53% of our annual budget.

Third Quarter lobbying activity reports were due before the close of business Monday, October 21. On November 25, we determined that four (4) lobbyists had failed to file these reports as required and thus violated the Ordinance. Two (2) of them had filed prior to the date on which fines began, but the others are subject to fines of \$1,000 per day until they do file. All this information was made public on that day.

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. Programmers at the Department of Innovation and Technology are close to a fix for this problem.

N. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received six (6) new requests under the Freedom of Information Act. The first was for records pertaining to recording City officials doing their public activities; the requestor was advised we had no such records. The second was for records dealing with the requestor's injury claim against the City and a complaint about a City employee; the requestor was advised we were the wrong department to

have records about her claim but that she should communicate with the IG as to her complaint. The third was for any advisory opinions issued to or about a former employee; the requestor was advised that the confidentiality provisions in our Ordinance did not authorize us to provide such documents. The fourth was for emails containing the word “expediter”; the requestor was advised that, as to confidential emails, we were not authorized to provide them, but we did provide emails that were not confidential. The fifth was for the electronic record of a lobbyist’s termination; we provided the link to that page in our ELF system. The sixth was for documents about a proposed expediter ordinance and records of this Board about expediter discipline, emails between the Board and the Law Department, correspondence between the Board and aldermen, and correspondence between the Board and any other City agency; the requestor was advised that we could not provide confidential records, had no relevant records of communication between us and the Law Department or aldermen, but we did provide non-confidential emails about the matter within our office, and between us and the Mayor’s Office of Intergovernmental Affairs.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

None

VII. NEW BUSINESS

None

At 12:19 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, 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 guests were excused.

At 1:55 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, absent) to reconvene into open session.

The guests joined the open session of the meeting.

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, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, absent) in open session, to approve the executive session minutes, of the October 29, 2019 meeting.

IX. CASEWORK

A. Status Report on Matter after Denial of Request for Reconsideration re: Unregistered Lobbying in Violation of §2-156-245 of the Governmental Ethics Ordinance

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

Staff reported that the fine previously assessed against a person the Board had determined was an unregistered lobbyist had not been paid, and thus, pursuant to notice sent to that person's attorney, the Board would send the matter to the Department of Law for collection or to handle the matter as it deemed fit.

B. Status Report re: Retaining and Employing an Unregistered Lobbyist in Violation of §2-156-305 of the Governmental Ethics Ordinance

2. Case No. 19018.L.E., Retaining and Employing an Unregistered Lobbyist

The Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, absent) to approve staff's report that it had resolved the matter with a company about which the Board had previously determined there was probable cause that it had violated the law in the Ordinance against retaining or hiring an unregistered lobbyist and, accordingly, to: (i) accept a fine in the amount of Two Thousand (\$2,000) Dollars, the maximum amount allowable under the law; and (ii) to approve the form of the publication of the matter and to post that narrative on the Board's website.

C. Consideration of Staff's Report on Completed Investigation Provided to the Board by the Office of Inspector General Pursuant to §§2-156-385(1)-(3) of the Governmental Ethics Ordinance

3. Case No. 19035.IG, Prohibited Political Activity

The Board: (i) VOTED 3-1 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, absent; William Conlon, dissenting) to dismiss this case on jurisdictional grounds, in that the Office of Inspector General (IG) commenced an investigation of an alderman in December 2017 (based on an anonymous complaint) but did not have a written complaint signed by the complainant (as required by §2-56-045 of the Municipal Code in effect at all relevant times) until July 2019, and the evidence adduced after the date of this complaint was insufficient to warrant a Board finding of probable cause; and (ii) VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, absent) to issue the alderman a letter of advisement that City-purchased equipment must, pursuant to City rules, be operated solely by City employees or officials.

D. Consideration of Request for Advisory Opinion

4. Case No. 19037.A, Lobbying

The Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, absent) to direct staff to draft an advisory opinion addressing each hypothetical situation described in the opinion request for the Board's consideration and issuance at the January 13 meeting.

E. Report on Referred Complaint

5. Case No. 19036.C, Statement of Financial Interests

Staff reported that it had formally requested that the IG conduct a factual investigation, after reading published reports in the Chicago Tribune and the Chicago Sun-Times that a former City employee had worked for an outside company while employed by the City, but had not reported income earned from the company as required on the annual Statements of Financial Interests. Specifically, staff asked the IG to ascertain during what period of time the former employee was paid under contracts with the company and the amount of income paid under those contracts.

At 2:09 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, Dr. Daisy S. Lezama, and Hon. Barbara McDonald, absent) to adjourn the meeting.