

BOARD OF ETHICS

Open Session Minutes

FEBRUARY 10, 2020, 3:08 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
Jef Johnson, Special Project Coordinator

BOARD MEMBER ABSENT

Zaid Abdul-Aleem

GUESTS ATTENDING

Heather Cherone, The Daily Line
Cordell Longstreet, Chicago Documenters

The Chair opened the meeting at 3:08 p.m. The Board members, staff and members of the public introduced themselves. Board Member Hon. Barbara McDonald excused herself from the meeting at 3:13 p.m. and returned at 3:27 p.m.

I. APPROVAL OF MINUTES

The Board VOTED 5-0 (Zaid Abdul-Aleem and Hon. Barbara McDonald, absent) to approve the open session minutes of the Board's meeting of January 13, 2020.

II. CHAIR'S REPORT

III. MEMBERS' REPORT

IV. EXECUTIVE DIRECTOR'S REPORT

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

1. On December 18, the City Council voted into law several amendments to the Governmental Ethics Ordinance, in which this Board played a major role in drafting. These take 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.

- 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.
2. As has now been widely publicized, implementation of the non-profit lobbying provisions (also passed on July 24) has been delayed to April 20. In Executive Session, we will discuss staff’s draft Rules and Regulations addressing this law, and we have another advisory opinion with 13 hypotheticals on today’s agenda. We will continue diligently to issue advisory opinions as questions arise.
3. On February 13, I will testify before the City Council’s Committee on Ethics and Government Oversight on a substitute ordinance. The ordinance would amend §2-156-110(b) to prohibit any City employee or official who has contract management authority to have a financial interests in or derive any work-related compensation from any contractor, subcontractor or persons who is otherwise a party to that contract. The Chair and staff first suggested this legislation to the Committee’s Chair in response to the stories about the SafeSpeed matter as reported in the media.

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

B. Testimony Before State Joint Commission on Ethics and Lobbying Reform

On Wednesday, January 15, I testified before this Commission regarding Chicago’s governmental ethics and lobbying laws, including the most recent amendments prohibiting “cross lobbying.” I stressed that: (i) a good lobbying law must have a minimum compensation/expenditure threshold, in response to one legislator’s question (I also pointed out that thresholds will vary depending on the particulars of the jurisdiction); and (ii) a good post-employment law should have a “cooling off” period that has not only a prohibition on lobbying that lasts for a specific time, but also a prohibition on “assisting or representing” persons, which would include “behind the scenes” work on behalf of a new employer or new client. Also testifying that day were representatives from the Secretary of State, Cook County Clerk, Illinois Municipal League, and various reform groups: the BGA, Change Illinois, Common Cause, and Reform for Illinois.

C. Education

Classes and Other Presentations

Since the Board’s last regularly scheduled meeting, 84 employees and officials attended classes conducted here on January 16 and 28 and February 6. 50 are scheduled for classes on February 20 and March 5.

All Board classes cover sexual harassment.

On January 27, I served as a panelist on a webinar program hosted by the American Bar Association on Recent Developments in Campaign Financing and Pay-to-Play laws.

On January 31, staff made two (2) presentations on the nonprofit lobbying law to about 80 representatives from various nonprofit organizations and foundations, at the invitation of Forefront (fka The Donor's Forum). I want to thank Forefront's leadership (especially Bryan Zarou and Dawn Melchior) for their unfailing assistance in helping us to educate the nonprofit community about the new law.

On February 5, staff made a presentation to representatives from several dozen nonprofit organizations at a forum hosted by the Marshall Square Resource Network on the Southwest Side. The invitation was extended by one of its members, the Community Programs Director of Latinos Progresando.

On February 19, we will meet with representatives from various South Side nonprofits at a presentation hosted by MJ Design and Co.

On February 25, we will present our annual class to all new SSA Commissioners at the request of the Department of Planning & Development.

On-line Training

For appointed officials

To date, 201 appointed officials have completed the new annual training for appointed officials. This represents about 37% of the total. They have until May 1 to complete it. 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

To date, approximately 26, 600 employees and nine (9) aldermen have completed the program. 281 are in progress. This represents approximately 85% of the total required to complete the training before April 1, 2020.

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

As the new President of COGEL, I will attend conference planning meetings in Atlanta in late March. Atlanta will host COGEL's 42nd annual conference.

E. Sister Agency Ethics Officers

On January 22, we met with our ethics counterparts at other local governmental agencies: 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.

F. 2020 Statement of Financial Interests

On or before March 1, notices to about 3,750 City employees and officials will be sent via email and U.S. first class mail advising them of the requirement to file 2020 Statements of Financial Interests before May 1. This will include 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. Forms will be 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.

G. Advisory Opinions

Since the Board’s last meeting on January 13, we have issued 323 informal advisory opinions. The leading categories were, in descending order: Travel; Lobbying; Gifts; Campaign Financing; City Property; Post-Employment; Political Activity; and Outside Employment (including outside volunteer service).

The leading City departments from which requesters came in this period were (in descending order): City Council; Mayor’s Office; Chicago Police Department; Chicago Public Library; Department of Public Health; Office of Inspector General; and Department of Assets, Information, and Services (fka DOIT and 2FM).

For calendar year 2019, we issued a total of 4,108 informal advisory opinions and nine (9) formal advisory opinions and declined to issue one (1) opinion as requested.

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 907 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 four (4). By law, we make all granted waivers public on our website.

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, 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 status report concerning potential settlement) 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 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 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 today's agenda is a referral from the IG, involving potential violations of the prohibition on engaging in political activity during compensated time and using City resources, the IG did not conduct any formal investigation but instead referred to us written materials for action the Board deems appropriate. A third IG case, pending since October 2019, 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. Also, note that on the agenda is the IG's request for documents generated by the Board from a Board-initiated enforcement action.

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. 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. It represents about one-third of the document's content. 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 40th Ward Alderman O'Connor.

N. Lobbyists-Regulation and Enforcement

To date for 2020, there are 734 registered lobbyists, and we have collected \$332,950 in lobbying registration fees. The deadline for lobbyists to re-register or terminate was by the close of business on Tuesday, January 21. On Friday, February 7, the date on which the Board could begin to assess fines of \$1,000/day until filing or termination, we determined that 25 lobbyists had violated the Ordinance and made their names public on our website. To date, eight (8) lobbyists have failed to file 4th Quarter Activity Reports. They have until February 27 to file them or face fines of \$1,000/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.

O. Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received five (5) new requests under the Freedom of Information Act.

The first was for records in connection to a DEA investigation; we located no records and advised the requestor.

The second was for an unpublished City Aldermanic handbook; we denied the request, citing the exception for preliminary drafts of a record.

The third was for all records pertaining to our agency's employees' agency expenses; the Law Department and Mayor's Office advised that the requestor withdrew the broad request, to be replaced by a FOIA to the departments collecting those City records.

The fourth was for lobbying records for a State elected official formerly registered as a lobbyist with the Board; we located some records and sent those to the requestor.

The fifth was for records of a certain residence's Homeowner's Exemption Applications; we do not create or retain such records and so advised the requestor.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

Discussion of the lobbying law amendments to the Governmental Ethics Ordinance

The Executive Director reported that staff has continued to engage with staff from the Mayor's Office and representatives from the nonprofit community regarding implementation of the City's nonprofit lobbying law, set to begin on April 20. If further amendments need to be submitted to City Council, the Board will have a chance to review and comment on them.

VII. NEW BUSINESS

2. Discussion re Inter-Board Member Communications

Staff discussed compliance with the Illinois Open Meetings Act with respect to email communication between Board members.

3. Draft Rules & Regulations

The Executive Director explained that the Mayor's Office has requested that the Board not vote on its draft Rule until it has had a chance to weigh in. By law, draft Rules and Regulations take effect 45 after we submit them to the City Council unless the Council votes by majority to disapprove them; and (ii) the true deadline here is July 20, which is when second quarter activity reports are due, which means that the Board will need to begin educating people about keeping track of their lobbying time and expenditures beginning on April 1, the first day of the second quarter.

At 3:25 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 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, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer 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.

Members of the public were asked to leave the Executive Session of the meeting and advised they would be invited into the reconvened Open Session of the meeting.

At 4:54 the Board VOTED 5-0 (Zaid Abdul-Aleem and Nancy C. Andrade, absent) to reconvene in Open Session. The public was invited into the Open Session of the meeting.

MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

V. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in executive session, VOTING 5-0 (Zaid Abdul-Aleem and Nancy C. Andrade, absent) in open session, to approve the executive session minutes of the January 13, 2020 meeting.

VI. CASEWORK

A. Status regarding Notice of Violation sent after Meeting between Board and Respondent after Board's Issuance of Notice of Probable Cause Findings Based on Publicly Available Documents

1. Case No. 19030.C.2, Improper Influence

The Chair explained the nature of the matter and its disposition, which is that the respondent paid the fine assessed by the Board that was the maximum amount provided for in the Ordinance.

B. Status Report on Matter after Board's Probable Cause Finding Based on a Completed Investigation by the Office of Inspector General Pursuant to §§2-156-385(1)-(3) of the Governmental Ethics Ordinance

2. Case No. 19029.IG, Post-Employment, Confidential Information, Conflicts of Interest

The Chair explained the nature and status of this matter, which is continued communication between the Board and respondent's attorney as to potential settlement. If no settlement can be reached, the respondent is entitled to formally meet with the Board to attempt to reverse the Board's probable cause finding.

C. Advisory Opinion

3. Case No. 20003.A, Lobbying

The Board voted 5-0 (Zaid Abdul Aleem and Nancy C. Andrade, absent) to issue an advisory opinion determining that the following activities **would** constitute lobbying:

- individuals paid by a nonprofit who seek to renegotiate a contract, grant, or Memorandum of Understanding ("MOU") that would require the execution of a revised document, if not issued by the City pursuant to a process involving competitive bidding, such as an RFP or RFQ;
- serving on a panel discussion with City employees or officials where there is a specific City policy, rule or ordinance being debated, if a paid nonprofit employee or agency urges the City personnel to adopt a particular position for or against the policy.

And that the following activities would **not** constitute lobbying:

- paid nonprofit employees who provide assistance to a City Council Caucus by supplying general information, not a position on specific legislation, although the nonprofit may be taking a position on that legislation;
- attempting to influence decisions by the City's "sister agencies," such as the Chicago Public Schools or Chicago Park District;
- conducting "grassroots" outreach in which a nonprofit's paid staff educate and encourage City residents to contact their aldermen;
- legal staff of a nonprofit who provide the City with assistance in acquiring parcels of real estate for public purposes, like a new park;
- placing a position paper on a nonprofit's website or social media sites;
- a nonprofit employee who is quoted in the media.

D. Consideration of Matter Referred by the Office of Inspector General for Possible Probable Cause Finding

4. Case No. 20002.IG, Prohibited Political Activity

The Chair explained the nature of the matter and its resolution. The Office of Inspector General ("IG") referred a matter to the Board for appropriate follow up action. The referral was based on a phone complaint the IG received from an employee in one ward office, who alleged that an unknown employee in a different ward office called, during regular working hours, from the first ward office's telephone number, inviting the second alderman and the second alderman's staff "to a fundraiser hosted by" the first alderman, for whom the caller works. The IG did not investigate the matter, however, and the referral did not provide any information as to whether the fundraiser was "political." After Board staff formally requested that the IG clarify this detail, the IG sent additional information, but none of it was sufficient to indicate whether the fundraiser was political. The Board dismissed the matter, but, in an abundance of caution, decided to use the incident as a "teachable moment" and directed staff to issue a written reminder to the first alderman explaining the prohibitions on using City resources for prohibited political activity.

E. Consideration of Request for Documents Made by the Office of Inspector General

5. Case No. 20004.IG, Lobbying

The Chair explained the request that was made by the IG for documents pertaining to one of the Board's earlier enforcement matters, involving unregistered lobbying. The Board will make certain documents from its file available for inspection by the IG.

The Board VOTED 5-0 (Zaid Abdul-Aleem and Nancy C. Andrade, absent) to approve the Chair's explanations in Open Session of Case Nos. 19030.C.2, 19029.IG, 20002.IG and 20004.IG.

X. OTHER BUSINESS

None

At 5:03 p.m., the Board VOTED 5-0 (Zaid Abdul-Aleem and Nancy C. Andrade, absent) to adjourn the meeting.

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