

BOARD OF ETHICS

Open Session Minutes

AUGUST 17, 2020, 3:02 P.M.

740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Dr. Stephanie Cox-Batson
David L. Daskal
Dr. Daisy S. Lezama
Hon. Barbara McDonald

STAFF PRESENT

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

BOARD MEMBERS ABSENT

Nancy C. Andrade

GUESTS ATTENDING

Heather Cherone, WTTW
Alex Nitkin, Daily Line

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 6-0 (Nancy C. Andrade, absent) to approve the open session minutes of the Board's meeting of July 13, 2020.

II. CHAIR'S REPORT

The Chair again thanked the staff for its continued diligence during the pandemic and asked the Executive Director to update the Board and guests regarding the lawsuit brought by Jason Lee, a former Investigator for the Civilian Office of Police Accountability (COPA). The suit is captioned as Case No. 2020 CH 04524 and is pending in Cook County Circuit Court, Chancery Division. It is brought by Mr. Lee and his post-City employer, the Policeman's Benevolent and Protective Association. It asks the Court to declare the post-employment provisions of the Governmental Ethics Ordinance unconstitutional, and to permanently enjoin the City from enforcing these provisions against the former City employee. The Executive Director explained that, on July 31, the Honorable Anna H. Demacopoulos denied the plaintiff's motion for a preliminary injunction and set October 12 and 13 to hear the motion for a permanent injunction. But she also indicated that, should the City file a motion to dismiss the matter, she will hear it.

III. MEMBERS' REPORT

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Staffing during the Covid-19 Pandemic

Except for me, staff members continue to work remotely for the most part, but all have come in from time to time to work on tasks that can be completed most efficiently in the office. Because I live but a seven (7) minute walk from the office, I am fortunate to be able to come in every day.

B. Amendments to the Ordinance

1. On December 18, 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.

Note: as was reported in the Tribune, on April 22, an amendment was submitted to the City Council that would effectively relax this latter prohibition by limiting the prohibition to elected officials from jurisdictions that have "pending or recurring legislative or contractual matters involving the City." See: https://chicago.legistar.com/Legislation_Detail.aspx?ID=4424766&GUID=B022DC30-A23F-4E93-A035-468556C844A0&Options=Advanced&Search=

I do not know whether the City Council's Committee on Ethics and Government Oversight will hold hearings on this proposed amendment. A more recent Tribune article, dated July 5, implies not: <https://www.chicagotribune.com/politics/ct-lori-lightfoot-lobbyist-ordinance-stalled2020705-nbfec7mi5bw5mzyokabl5iiey-story.html>. We will administer and enforce the law as written.

2. As has now been widely publicized, implementation of the non-profit lobbying provisions (also passed on July 24, 2019) was delayed to January 1, 2021. We anticipate that amendments will be submitted to the City Council perhaps in October 2020. Just as the Covid-19 pandemic began, we were working diligently with representatives from the Mayor's Office and non-profit community on potential amendments.
3. There will be more discussion in closed session of potential amendments relating to the procedures covering investigations submitted to the Board by the Office of Inspector General ("IG").

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

C. 2021 Budget

On July 24, we submitted our 2021 budget request, which reflects a cut of \$9,031 in non-personnel costs, to offset the rise in personnel expenses in that amount.

D. Education

Classes and Other Presentations

We have cancelled all classes from March 17 on. 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 cover sexual harassment.

On August 20 I am scheduled to give a presentation to members of the Chicago Animal Care Commission and senior staff from that agency, though this will likely be virtual.

On-line Training

For appointed officials

To date, 590 appointed officials have completed the new annual training for appointed officials. This represents 90% of the total. 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 Intergovernmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 32,382 employees and all 50 aldermen have completed the program; 46 employees have not, though six (6) are in progress. This puts the City at 99.87% compliance. All but four (4) of those who have not completed the training are City Council employees, working remotely. All will complete it as soon as they can.

For lobbyists

I am pleased that an all-new, expanded training for lobbyists is completed and will be posted this week. Lobbyists will have until March 1, 2021 to complete it.

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

As the President of COGEL, I can report that planning for the streamlined virtual conference in December continues. There will be two plenary sessions, and several videos of panel discussions. All will be offered free of charge to more than 600 COGEL members, including any Board members or staff of our office. 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

F. Common Cause Interview

On July 23, I was interviewed by Common Cause about the Board's work and government ethics generally. The interview can be found here: <https://www.facebook.com/CommonCausellinois/videos/294391388292891>

G. Sister Agency Ethics Officers

On July 16, the ethics officers from the other local governmental agencies met via Zoom (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). Our next meeting will be in October.

H. 2020 Statement of Financial Interests

On February 28, notices to 3,616 City employees and officials were sent via email and U.S. first class mail advising them of the requirement to file 2020 Statements of Financial Interests before May 1. That included persons 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. Due to the Covid-19 crisis we extended that deadline to July 1.

There remains just one (1) individual left to file: a City Council employee.

Those who failed to file by 11:59:59 pm on July 14 became subject to fines of \$250/day until they file. We have collected \$300 in fines and have at least \$150 in outstanding fines. . All those who failed to provide a valid reason for not filing by the deadline were found to have violated the Ordinance. The names and fines of all 44 violators are posted, and those assessed fines are noted.

Forms are posted on our website as soon as they are processed by staff – our goal, which we met this year – 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 that time elapses, 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.

I. Advisory Opinions

Since the Board's last meeting on July 13, we have issued 292 informal advisory opinions. The leading categories for informal opinions were, in descending order: Lobbying; Statements of Financial Interests; Gifts; City Property; Political Activity; Campaign Financing.

The leading City departments from which requesters came in this period were, in descending order: City Council; Mayor's Office; Police Department/Civilian Office of Police Accountability (COPA); Fire Department; Mayor's Office of People with Disabilities; and Department of Buildings.

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.

J. Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions

Every formal Board opinion issued since 1986 is posted on the Board's website (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.

K. Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted six (6) and denied two (2). By law, we make all granted waivers public on our website. A reconsideration of a request for a ninth waiver is on today's agenda.

L. Summary Index of Board-Initiated Regulatory Actions/Adjudications/pre-2013 Investigations

We post the summary index of all investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board undertook without an IG investigation.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There have been, to date, 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.

M. Summary Index of Ongoing IG/LIG Investigations/Adjudications

We post and continually update, on our website, an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (a total of eleven since July 1, 2013, the last two (2) of which are on today's agenda, one for a determination of a violation and fine assessment, the other for a 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. 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 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 are two IG cases, pending since October 2019 and May 2020, respectively. In the first, 19029.IG, the Board met with the respondent and his counsel at the July meeting. The case

involves potential violations of the Ordinance's post-employment, prohibited conduct, confidential information, and conflicts of interest provisions. A settlement offer has been sent to the respondent, but we have not yet heard whether he has accepted it. The second, 20005.IG, involves the filing of false or misleading Statements of Financial Interests. The respondent submitted written materials to the Board but declined the opportunity to meet with the Board. The matter is on today's agenda for the Board to issue a determination of violation and assess appropriate fines.

Note: in each of these cases, the fines range from \$500-\$2,000 per violation.

Please note finally that, in all matters adjudicated or settled on or after July 1, 2013, the Board makes public the names of all violators and penalties assessed, or a complete copy of the settlement agreement.

N. Disclosures of Past Violations

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

Since the time this provision (§2-156-070(b)) became effective on July 1, 2013, the Board has advised three (3) aldermen, two (2) aldermanic staffers, two (2) 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, the first 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 six (6) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance.

O. 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 40th Ward Alderman Patrick O'Connor.

P. Litigation

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 improperly attempts to regulate the practice of law by Illinois attorneys. It asks 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 and set the matter for a hearing on the permanent injunction for October 12 and 13. The judge also stated that if the City files a motion to dismiss the matter, she will hear that motion.

Q. Lobbyists-Regulation and Enforcement

To date for 2020, there are 833 registered lobbyists – another all-time high – and we have collected \$400,075 in lobbying registration fees. This represents 45% of our budget request for 2021.

Q2 activity reports were due by July 20, 2020. As of today, nine (9), two (2) of whom represent non-profits) have not filed their reports. If the other seven (7) do not file by August 18, we will find them in violation of the Ordinance, and they will be subject to fines of \$1,000 per day beginning on Aug 19, 2020.

R. Freedom of Information Act

Since the last Board meeting, the Board has received six (6) new requests for records.

The first was for certain sitting appointed officials' Statements of Financial Interests; we provided the link to our website, so the requestor may search for each of those persons.

The second was for a corrected list of department/aldermanic ethics officers; we provided the link to our website, so the requestor may search for the appropriate lists.

The third was a follow-up to the second, asking for all emails on 8-4-20 from/to R. Superfine/S. Berlin including words "45th Ward" or "Gardiner"; we pasted those emails into an attachment and sent to requestor.

The fourth was for training records for the ethics officer of the 45th Ward; we located and sent to requestor the responsive training records.

The fifth was for training records for an Alderman and for his Statements of Financial Interests; we located and sent the requestor a link to our website for the Statements of Financial Interests and set out the responsive training records.

The sixth was for an aldermanic written commitment to abide by the aspirational code of conduct. We could not locate a record, responded accordingly, and suggested the Clerk's office, as it long ago collected aldermanic statements of financial interests.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

None

VII. NEW BUSINESS

None

At 3:28 p.m., the Board VOTED 6-0 (Nancy C. Andrade, 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.

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

At 4:41 the Board VOTED 5-0 (Zaid Abdul-Aleem and Nancy C. Andrade, absent) to reconvene in Open Session. The public were 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 5-0 (Zaid Abdul-Aleem and Nancy C. Andrade, absent) in Open Session, to approve the Executive Session minutes of the July 13, 2020 meeting.

II. NEW BUSINESS

None

III. CASEWORK

A. Status after Board Meeting with Respondent 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

1. Case No. 20005.IG, Statement of Financial Interests

Staff advised the Board that neither the respondent nor his counsel responded to the Board's offer to enter into a settlement agreement by the deadline given. Since the offer of settlement expired with no contact from respondent or his counsel, staff requested that the Board issue a final judgment as to the ethics violation and provide respondent with 35 days in which to pay his fine -- and that failure to do so would result in staff referring the matter to the City's Law Department, Collections division for enforcement. The Board VOTED 5-0 (Zaid Abdul-Alem and Nancy Andrade, absent) to determine that respondent was in violation and for staff to send respondent or his counsel a notice of violation in accordance with the Board's determination.

B. Status after Board Consideration of Respondent's Written Submission 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, in Response to Board's Request for Investigation

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

Staff provided the Board with a status report of the draft Settlement Agreement and that the respondent and his counsel are reviewing it. We anticipate having the matter fully settled by the September Board meeting.

C. Consideration of Request for Reconsideration of Board's Determination of Request for Waiver from the Post-employment provisions, per §2-156-402(a)(2)

3. Case No. 20021.W, Post-Employment

A current City employee requested reconsideration of a waiver of the Post-Employment Restrictions in order to accept a position with a City vendor with which the City employee's department does business. After considering the letters in support of the waiver, submitted on behalf of the employee, and hearing testimony from the employee and the employee's supervisors, the Board VOTED 5-0 (Zaid Abdul-Alem and Nancy Andrade, absent), to grant the employee the waiver.

D. Dismissed and Referred Complaints

4. Case No. 20023.C, No Jurisdiction

The Executive Director reported that, on July 29, he received an email from the owner of two bars located in the City. In it, the owner alleges that an alderman and/or his Chief of Staff were behind "targeted attacks" on one of the bars for supposed violations of Covid-19 restaurant/bar rules. These include improperly having inspectors from the City's Department of Business Affairs and Consumer Services ("BACP") investigate the location on several occasions and harass its employees, leading to an order of closure from BACP issued on July 27, and what he calls a "defamatory press release" from the Alderman on July 28, which was in response to "negative Facebook posts aimed at the Alderman by an individual related ... through marriage, [to] one of the owners of the business."

That day, legal staff examined the complaint, and referred it directly to the Office of Inspector General for any action deemed appropriate. In his email, the owner wrote that he had already contacted the Office of Inspector General, on July 27.

IV. OTHER BUSINESS

None

At 5:26 p.m., the Board VOTED 4-0 (Zaid Abdul-Aleem, David Daskal and Dr. Daisy S. Lezama, absent) to adjourn the meeting.