

BOARD OF ETHICS

Open Session Minutes

JULY 12, 2021, 3:02 P.M.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Zaid Abdul-Aleem
Dr. Stephanie Cox-Batson
Hon. Barbara McDonald

BOARD MEMBERS ABSENT

Dr. Daisy S. Lezama
David L. Daskal

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard J. Superfine, Legal Counsel
Edward Primer, Program Director
Pauilly Casillas, Staff Assistant

GUESTS ATTENDING

Alex Nitkin, The Daily Line
Stephanie Snow, Office of Inspector General
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 4-0 (David L. Daskal and Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of June 14, 2021.

II. CHAIR'S REPORT

The Chair thanked the staff for its hard work during the past month.

III. MEMBERS' REPORTS

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Potential Amendments to Ordinance

The current thinking is still that a package of amendments to the Governmental Ethics Ordinance regarding non-profit lobbying and potentially other topics will be submitted later in the year. 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>

In the meantime, staff has been working on compiling another list of recommended Ordinance amendments, potentially to be presented to the Board in August or September with an eye toward forwarding those recommendations to the Mayor and City Council.

B. Board members

The Mayor's Office has been actively seeking a potential Board member to fill Nancy Andrade's vacancy. I hope there will be an announcement in the next few weeks as to her replacement. Our Chair's term technically expires on July 31; I am informed that he will be re-appointed!

C. New Staff member

I am pleased to report that Lauren Maniatis should be starting as our Attorney/Investigator on August 2, to replace Ana Collazo, who resigned in April to take a position with the City Colleges' Inspector General. Ms. Maniatis has been an Assistant Cook County State's Attorney since 2009 and is a graduate of Bradley University and Valparaiso University Law School.

D. Education

On-line Training

For appointed officials

To date, all but 26 appointed officials have completed the 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 Intergovernmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 29,511 employees and 46 aldermen have completed the program (putting us at about 93.7% compliance City-wide). 315 employees and officials are currently in progress. We again extended the deadline to August 1, 2021, but may yet extend it again.

We are working on the next on-line seminar and hope to have it posted in September. The program we have been using for this and our on-line lobbyist training programs, Articulate On-line, is being discontinued at the end of year. We are working with the Department of Human Resources to migrate our training programs to the City's e-learning management system.

For lobbyists

To date, all but eight (8) lobbyists have completed the annual on-line training, putting us at 99.9% compliance. Those who did not complete the training by 11:59:59pm June 15 are being fined \$250/day until they complete it. We have completed the 2021-2022

lobbyist training and hope to have it posted on the new e-learning system in the next month.

Classes and other presentations

We cancelled all in-person classes from March 2020 on. Given the waning course of the pandemic, we will re-start these in September 2021. We have extended all training deadlines accordingly. All Board classes and educational programs cover sexual harassment.

We will make a presentation on July 14 to the newly-constituted Board of Health, and on July 21 to employees of the Treasurer's Office.

On July 7, I testified on best practices before the Evanston City Council's Rules Committee, at the invitation of one of its members. Evanston is considering eliminating its Board of Ethics.

E. 2022 Budget Submission

Our budget submission is due Friday, July 16. We anticipate no significant changes from our 2021 budget.

F. Advisory Opinions

Since the Board's last meeting, we have issued 316 informal advisory opinions. The leading categories for informal opinions were, in descending order: Travel; Gifts; Statement of Financial Interests; Lobbying; Outside Employment; Post-employment; City Property; and Political Activity.

The leading City departments from which requesters came in this period were, in descending order: City Council; Police Department/Civilian Office of Police Accountability (COPA); Mayor's Office; Department of Public Health; Business Affairs and Consumer Protection; and Aviation, Office of Inspector General, and Planning & Development (a three-way tie).

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.

There are three (3) formal opinions on today's agenda.

G. 2021 Statements of Financial Interests

The filing deadline was before May 4 for the 3,603 City employees and officials who on February 28 were notified of the requirement to file their 2021 Statements. As of May 12, we began assessing daily fines of \$250 to all who had not then filed. As of today, there remain only three (3) persons, all appointed officials, who have not yet filed and who are accruing

daily fines until they file. We have to date collected \$14,350 in late fines. Those who have not paid their late fines by July 22 will be referred to the Law Department for collection.

H. Lobbyists: Re-registration deadline and Q4 Reports

To date for 2021, there are 840 registered lobbyists – another all-time high. We have collected \$388,375 in lobbying registration fees. Q2 Activity reports are due before July 21.

I. Personnel Rules Revisions

In conjunction with the Mayor's Office, Departments of Human Resources, Law, Buildings, Business Affairs and Consumer Protection, and others, we worked on updating the City Personnel Rules, which were last revised in 2014. In particular, we are assisting on revisions to Rule XXIX, entitled "Conflict of Interest," with respect to: (i) conforming the Rules to the current version of the Governmental Ethics Ordinance; and (ii) expanding that Rule to prohibit City employees from making certain recommendations as to the hiring of other City employees and to recommending vendors or tradespeople to persons who are subject to inspections, permit reviews, etc.

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

The full text of 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. The opinion issued by Board staff that will be discussed in Executive Session will be added to these sites.

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 seven (7) and denied two (2). By law, we make all granted waivers public on our website.

L. Sister Agency Ethics Officers

In March we met via Zoom with the ethics officers from the other local governmental agencies: the Cook County Board of Ethics, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, Cook County Assessor's Office, Cook County Inspector General's Office (who are responsible for the MWRD) and Chicago Housing Authority. Our next meeting will be in September.

M. Lobbying Assistance to CPS

We modified our ELF program to include lobbyists who may eventually register with the Chicago Public Schools (CPS) and have offered our assistance to them in drafting their lobbying policy. Should CPS pursue this policy in light of the new State law passed two weeks ago, once that policy becomes effective, CPS's lobbyists would be able to begin registering with our office, and the public will know who they are and the information they disclose. All enforcement actions, however, would be up to CPS to bring—we would inform them of missed deadlines, etc. However, as CPS is, like the City, a home rule unit of government, but, unlike the City, is *not* exempt from the new State law, we are unclear whether CPS officials will press forward with their own lobbying policy, as any rules or policies they may adopt that are inconsistent with the new State law would be superseded, and their lobbyists would be required to register in Springfield with the Secretary of State.

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

Last Fall, 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 were 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 will occur in 2021, after responses to the City's recently issued RFP (request for proposals) are analyzed. Note that the Gambling Act's reporting requirements are in addition to any all restrictions in the City's Governmental Ethics Ordinance that would apply to those "applicants" who "communicate" with City officials or employees, such as the Ordinance's gifts restrictions and lobbyist registration requirements.

O. 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, 127 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 54 such matters.

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

There are no completed IG investigations currently awaiting adjudication by the Board.

We post on our website and continually update an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (12 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. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/PulbicScorecard.pdf>

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 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.

Q. 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. In 11 matters, the Board has determined that minor violations occurred, and the Board sent confidential letters of admonition, as required by Ordinance. These letters are posted on the Board's website, with confidential information redacted out. See <https://www.chicago.gov/city/en/depts/ethics/supp info/ ao - apptoffi1.html>

R. Litigation

Lee v. City of Chicago. In June 2020, the City was sued 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 ("PBPA"). 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. The suit 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 moved to dismiss the entire matter. On February 25, Judge Demacopoulos granted the City's motion to dismiss concerning the facial challenge to sections 100(a) and (b) and also the as-applied challenge to section 100(a). The court, however, denied the motion concerning the as-applied challenge to section 100(b), but expressed concern that this claim may be moot. Count III was also dismissed; it asked for a declaratory judgment that, by enforcing the Ordinance, the City is violating PBPA members' right to "counsel of their choice." However, the court granted plaintiff leave to amend the complaint for all of the dismissed counts. The plaintiff never did. Instead, he decided to move forward on the as-applied vagueness challenge to section 100(b)

of the Ordinance. As a reminder, this is the only claim that survived the motion to dismiss. While Judge Demacopoulos questioned whether this claim was moot in light of the expiration of the one year ban that applied to the plaintiff, she left it up to the plaintiff whether he wanted to pursue the claim. Plaintiff may seek compensatory damages if he can prove that he suffered damages. The City filed its answer and affirmative defenses to the amended complaint on April 26.

Note: several PBPA members filed grievances under their collective bargaining agreement, alleging that their right “to counsel of their choice” was violated by COPA. These were settled on terms that do not affect the Governmental Ethics Ordinance’s post-employment provisions.

Johnson v. City of Chicago. On October 14, 2020, a now-former 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 asked the court for a preliminary injunction preventing the City from enforcing the “cross-lobbying” ban, §2-156-309, on the basis that it violated his rights of free speech and association under the First Amendment of the U.S. Constitution. On May 14, the Honorable John Robert Blakey granted the City’s motion to dismiss the suit on mootness grounds, as the plaintiff is no longer a Wilmette elected official, and thus would not be precluded from registering as a lobbyist with our office. However, the dismissal was without prejudice, meaning that a new plaintiff could file a similar lawsuit.

Brookins v. Board of Ethics, et al. This matter is assigned to the Honorable David Atkins in the Chancery Division of Cook County Circuit Court. The Board’s and my attorneys have moved to dismiss the entire lawsuit and have submitted briefs. We await Judge Atkins’s decision.

Czosnyka et al. v. Gardiner et al. On June 17, several individuals residing in the 45th Ward filed a lawsuit in United States District Court against 45th Ward Alderman James Gardiner and the City, alleging that their 1st Amendment rights were violated by the Alderman’s improper blocking of them on his “official” City social media accounts. The plaintiffs seek certification of a class of all those improperly blocked by the Alderman. The suit also alleges that more than 20 complaints of improper blocking have been filed with the Board and the OIG, but to date the City has “failed to take any action to reprimand Alderman Gardiner, although it has the power to do so,” and thus “has acquiesced in [the Alderman’s] constitutional violations.” It seeks to have the plaintiffs reinstated as full participants in these social media accounts and unspecified damages. Both parties have been served, and the case is assigned to the Honorable Judge Sharon J. Coleman. The docket number is 21-cv-3240.

S. Freedom of Information Act

Since the last Board meeting, the Board has received eight (8) requests.

The first request was for information about the Board staff opening; the requestor was told that there was an opening but that a request for a record with the information sought should be directed to the Human Resources department.

The second request was for certificates for FOIA training; the requestor was sent those certificates that were available.

The third request was for emails of a Board staff member; the requestor was advised that staff member was no longer at the Board and her email account had been deactivated.

The fourth request was for emails of another staff member; the requestor was sent those emails, with redactions.

The fifth request was for emails of another staff member; the requestor was sent only those emails that were not confidential under the Ordinance.

The sixth request was for emails of another staff member; the requestor was sent only those emails that were not confidential under the Ordinance.

The seventh request was for ethics education training certificates and a list of 2020 lobbyists; the requestor was advised that there were no certificates and gave a link on our website to find the City's website with historical lobbyist information.

The eighth request was City-wide for several journalists' AV products and related materials; staff requested suggestions from the Law Department.

V. PUBLIC COMMENTS

None

VI. OLD BUSINESS

None

VII. NEW BUSINESS

None

VIII. PRIOR BOARD MEETING'S EXECUTIVE SESSION MINUTES

Discussion regarding approval of the Executive Session Minutes of the June 14, 2021 meeting.

The Board will consider this matter in Executive Session.

At 3:08 p.m., the Board VOTED 4-0 (David L. Daskal 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 members of the public were asked to leave the Executive Session of the meeting and advised that they would be invited into the reconvened Open Session of the meeting.

At 4:11 the Board VOTED 4-0 (David L. Daskal and Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The members of the public were invited to rejoin the Open Session.

IX MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in Executive Session and VOTED 4-0 (David L. Daskal and Dr. Daisy S. Lezama, absent) in Open Session, to approve the Executive Session minutes of the June 14, 2021 meeting.

II. OLD BUSINESS

None

III. CASEWORK

A. Advisory Opinions

1. Case No. 21018.A, City-owned Property

The Board VOTED 4-0 (David Daskal and Dr. Daisy Lezama, absent) to ratify an advisory opinion, determining that a City employee violated the City-owned property provision in the Ordinance by using of the City seal (and his own department's insignia) in a video blog post in which the employee criticizes the City and his department and urges officials from another Illinois City not to enter into a contract with the City.

2. Case No. 21012.A, Duties of Personnel Staff of Elected Officials

The Board VOTED 4-0 (David Daskal and Dr. Daisy Lezama, absent) to approve an advisory opinion determining that a City elected official, and by extension, all City elected and appointed officials and supervisory employees, may not ask a City employee they supervise, or who is a subordinate member of their staff or agency, to perform a task that is of a personal matter for the official or supervisor and not related to the employee's job duties.

3. Case No. 21022.A, Financial Interest in City Business

The Board VOTED 4-0 (David Daskal and Dr. Daisy Lezama, absent) to approve an advisory opinion, determining that a City employee violated the Ordinance's Financial Interest in City business provision by owning 70% of a business that contracted with various aldermanic offices over the last 10 years to provide services and was paid with City funds. When the employee's ownership interest in the business was multiplied by the amount of payments to the business by the City, the employee's interest in this City contract, in the name of another (i.e. his company) came to more than the statutorily allowed amount of \$1,000 per year for all but one year.

B. Lobbying

4. Case No. 21019.L, Unregistered Lobbying

The Board VOTED 4-0 (David Daskal and Dr. Daisy Lezama, absent) to find there is probable cause to conclude an individual lobbied a City official without having ever registered as a lobbyist. The individual will now be entitled to meet with the Board to attempt to rebut that probable cause finding.

C. Report of Complaints Received or Referred

5. Case No. 21017.C, No Jurisdiction

Staff reported that it had referred a citizen complaint to the Office of Inspector General, alleging that a City worker verbally harassed the citizen on the sidewalk of a City street.

6. Case No. 21020.C, No Jurisdiction/City Property

Staff reported that a citizen filed a complaint alleging he was improperly blocked from an alderman's official Instagram account. Staff advised the citizen to file a complaint with the OIG, and also that one of the valid reasons someone may be blocked from an official City social media site is that the post leading to the blocking is defamatory. In this case, a court might conclude that the allegedly offending post was defamatory. The citizen informed the Board that he may try to become a plaintiff in a recently filed lawsuit.

7. Status Report re Case No. 20037.C, City-owned Property

Staff reported that another City department informed the Board that it had completed an investigation of a complaint the Board received and referred out, and had sustained allegations that a City employee improperly used departmental insignia in a campaign ad during the employee's candidacy for election to the General Assembly. The investigating department will be seeking discipline.

X. OTHER BUSINESS

None

At 4:27 p.m., the Board VOTED 4-0 (David L. Daskal and Dr. Daisy S. Lezama, absent) to adjourn the meeting.