

BOARD OF ETHICS

Open Session Minutes

OCTOBER 18, 2021, 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
Norma Manjarrez
Hon. Barbara McDonald

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard J. Superfine, Legal Counsel
Lauren Maniatis, Investigator/Attorney
Edward Primer, Program Director
Pully Casillas, Staff Assistant

BOARD MEMBERS ABSENT

GUESTS ATTENDING

Heather Cherone, WTTW
Tasha Rice, Loyola University student

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 7-0 to approve the open session minutes of the Board's meeting of September 13, 2021.

II. CHAIR'S REPORT

The Chair thanked the Staff for its valiant efforts during the pandemic, and on behalf of the Board thanked outgoing Board member Dr. Daisy S. Lezama for her dedicated nine (9) years of service to the Board and City. Dr. Lezama said it had been an honor to serve on the Board and that she will keep everyone informed of her next ventures.

III. MEMBERS' REPORTS

None

IV. EXECUTIVE DIRECTOR'S REPORT

A. Potential Amendments to Ordinance

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>

Staff continues to work on other potential Ordinance amendments, in conjunction with Chair Michele Smith of the City Council's Committee on Ethics and Government Oversight, perhaps to be presented in November or December.

B. Board Members

Today is Daisy Lezama's last meeting as a Board member. On behalf of the entire staff, I thank Daisy for her dedicated nine (9) years of service to the Board and City. I am also pleased to report that: i) the reappointment of Bill Conlon to continue as Chair and the nomination of Norma Manjarrez were unanimously passed by the City Council at its September 14 meeting; and ii) I am told the Mayor's Office will be submitting the nomination of Ryan Cortazar to replace Daisy—the nomination will be submitted at the October 27 City Council meeting. Ryan is a partner at the Chicago office of the law firm Korein Tillery and also served as an Assistant Compliance Officer with the Office of the Inspector General (IG) from 2011-2013.

C. Employee Vaccination Status

I'm also pleased to report that all eight (8) staff members are fully vaccinated for Covid-19, and in compliance with the City's policy on vaccinations.

D. 2022 Budget

Our budget appropriation for 2022 was approved; our budget will increase 5.8%, due to cost of living raises granted to all City employees. We had our annual budget hearing before the City Council on September 30. At that hearing, we discussed potential amendments to the lobbying laws, in general terms.

E. Education

On-line Training

For appointed officials

To date, all but 11 appointed officials have completed the annual training for appointed officials. We will not enforce deadlines for this year's training, due to the Covid-19 pandemic. We are grateful for the assistance of the Mayor's Office of Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

For all employees and aldermen

To date, 30,412 employees and all 50 aldermen have completed the program (leaving ~527 employees who have not yet completed the training). This puts the City at about 98% compliance City-wide). 57 employees are currently in progress. We extended the deadline several times, but at this point, due to Covid-19, and the fact that the training must, by design, be completed from a City computer, there are simply too many outstanding non-trained personnel to enforce the fine provisions in the law.

We have completed the next on-line training program and will post it in January 2022. Despite Covid, we will enforce the law in 2022, as the next program must be completed before January 1, 2023. We are working with the Department of Human Resources to migrate our training programs to the City's e-learning management system. This will enable users to take the training from any computer. The current and all previous, training programs were designed deliberately to be taken only from City computers, for security reasons.

For lobbyists

To date, 69 lobbyists have completed the newest annual on-line training, also posted on the City-wide e-learning system. They have until July 1, 2022 to complete the program.

Classes and other presentations

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

We have been contacted to make a presentation to the United Northwest Side Organization at their regular meeting and will likely do this in November or December.

F. Advisory Opinions

Since the Board's last meeting, we have issued 343 informal advisory opinions. The leading categories for informal opinions were, in descending order: Gifts; Travel; Lobbying; City-owned Property; Post-employment; Conflicts of Interests; Campaign Financing; and Employment of Relatives.

The leading City departments from which requesters came in this period were, in descending order: Mayor's Office; Police Department/Civilian Office of Police Accountability (COPA); City Council; IG; Business Affairs and Consumer Protection; Fire Department; and Department of Public Health.

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.

In the past five (5) years, the Board has issued 60 formal opinions, including 10 this year.

G. 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 915), redacted in accordance with the Ordinance's confidentiality provisions, here: https://www.chicago.gov/city/en/depts/ethics/auto_generated/reg_archives.html

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, here: https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/AO_index.docx

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.

H. 2021 Statements of Financial Interests

All 3,603 City employees and officials who, on February 28, were notified of the requirement to file their 2021 Statements have now filed them. As of May 12, we began assessing daily fines of \$250 to all who had not then filed. We collected \$19,050 in late fines.

I. Lobbyists: Q3 Reports

To date for 2021, there are 876 registered lobbyists – another all-time high. We have collected \$421,500 in lobbying registration fees. Q3 Activity reports will be due before October 21, and all registered lobbyists were sent email reminders on October 1.

J. 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.

K. Department Consultations

We assisted the Departments of Public Health and Business Affairs and Consumer Protection on revising their internal gift and conflicts of interests policies and are working with the Commission on Human Relations to formulate a policy governing its employees' service on non-profit and other boards.

L. 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.

M. Sister Agency Ethics Officers

We will next meet in November 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.

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

In the Fall of 2020, 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 prison.

Board staff has worked 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 the 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.

There are two (2) such matters before the Board today, for status hearings only.

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, 129 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 56 such matters.

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

There is currently one (1) completed IG investigation currently awaiting adjudication by the Board, involving unregistered lobbying. The IG sent it to us on August 13. It is on today's agenda for a potential finding of a violation and imposition of appropriate sanctions.

We post on our website and continually update an ongoing investigative record showing the status of every completed investigation brought to the Board by both the IG (13 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 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 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 public settlement agreement – 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 their attorney. At the conclusion of the hearing, the ALJ submits their 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 may find one or more violations of the Ethics Ordinance, or find 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 to (i): guarantee due process for all those investigated by the IG (or former LIG); (ii) 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) 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, except for unregistered lobbying violations, the penalties for which are \$1,000 per day beginning on the fifth day after the individual first engaged in lobbying and continuing until the individual registers as a lobbyist.

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 the Ordinance. These letters are posted on the Board's website, with confidential information redacted out. A twelfth matter is on today's agenda. 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. It asked for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. After the matter was briefed by both sides, on July 31, the Honorable Anna Demacopoulos denied the plaintiff's request for a temporary restraining order. The plaintiff was granted leave to file an amended

complaint, and filed one, adding an as-applied constitutional challenge. The City 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. Following the court's order on the City's motion to dismiss, the plaintiff was given leave to file an amended complaint, but he 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 damage. 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 (an Illinois unit of local government), sued the City in federal 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 a decision.

Czosnyka et al. v. Gardiner et al., docket number is 21-cv-3240. 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 Magistrate Judge Sharon J. Coleman. The City has moved to dismiss the matter on the bases that: i) plaintiffs have no standing; and ii) plaintiffs fail to state a claim that would survive a *Monell* challenge for holding a municipality

liable for acts committed by an individual. Note that Alderman Gardiner retained independent counsel and also moved to dismiss the suit.

S. Freedom of Information Act

Since the last Board meeting, the Board has received 11 requests.

The first was for emails of a former employee to and from the Board for a certain period; we advised the requestor we had no records.

The second was a City-wide request for communications to/from the City about a deceased person and the Texas abortion law; we had no responsive records and requested input from the Law Department and responded accordingly.

The third was for lobbying records; we advised that we had responsive records and included the link to ELF.

The fourth was for letters and/or emails between the Board and a named FOIA requestor since August 8, 2021. We located and sent one such record.

The fifth was for all FOIA requests and responses since January 1, 2019. We researched our records, asked for an extension, and are working with the Law Department on the response.

The sixth was for a handbook on ward operations; we advised the requestor we had no such record.

The seventh included questions about the responsibilities of a specific title in City service; we advised the requestor that we were the wrong department.

The eighth was for the draft version of the handbook cited in the sixth request; we responded that it was exempt from production as it was still a draft.

The ninth was for emails between named employees and complaints against them; we advised the requestor we had no such records and the identity of complainants or subjects of complaints to the Board are confidential unless and until there is a final determination that an individual violated the Ordinance.

The tenth was a City-wide request for City communications to or from the requestor's old school and related materials; we requested assistance from the Law Department.

The eleventh was from the media for summary Covid vaccination information about City employees. We advised that we are the wrong department and that the Law Department is preparing a City-wide response.

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 August 23, 2021 meeting.

The Board will consider this matter in Executive Session.

At 3:20 p.m., the Board VOTED 7-0 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 4:15 the Board VOTED 6-0 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 6-0 in Open Session, to approve the Executive Session minutes of the September 13, 2021 meeting.

II. OLD BUSINESS

None

III. CASEWORK

A. Consideration of Probable Cause Determinations: Excess Political Contributions

1. Case Nos. 21033.01.CF, .02.CF and .03.CF, Campaign Financing Contributions

The Board VOTED 6-0 to make a finding of probable cause that a contributor violated the Ordinance by making three (3) contributions to the political committees of two City elected officials (one of these committees twice), in excess of the \$1,500 per year/per committee/per calendar year limits, in violation of §2-156-445(a) of the Ordinance, and to send probable cause notices to the contributor and political committees.

B. Status Reports

2. Case No. 21029.C, City-owned Property

This matter is continued until the Board's November 15 meeting, the date chosen by the respondent to meet with the Board.

3. Case No. 21019.L, Unregistered Lobbying

Staff advised the Board that the respondent had paid the \$5,000 fine.

4. Case No. 21027.IG, Unregistered Lobbying

The Board VOTED 6-0 to make a finding of probable cause that, on three occasions, a registered lobbyist lobbied on behalf of three clients that he had not registered for in his annual or amended lobbyist registration, which violated §2-156-230 of the Ordinance and fined him \$75,000. This case was the result of an IG investigation, and the Board thanked them for their work.

C. Referred and Received Complaints

5. Case No. 21030.C, Aspirational Code of Conduct

Staff advised the Board that this matter was referred to the IG.

6. Case No. 21032, Conflicts of Interest

Staff advised the Board that this matter was referred to the IG.

X. OTHER BUSINESS

The Chair reported that potential amendments to the lobbying provisions are on the docket, as a result of the Board's budget hearing, and that discussions are continuing.

At 4:25 p.m., the Board VOTED 6-0 to adjourn the meeting.