

## **Executive Director's Report** **9/14/20**

### **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. I am fortunate to be able to come in every day. Last week, the City's human resources policies were amended, all now all Board employees will be required to work at least one full day per week in the office, unless they are ill.

### **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/LegislationDetail.aspx?ID=4424766&GUID=B022DC30-A23F-4E93-A035-468556C844A0&Options=Advanced&Search=>

It is now clear that the City Council's Committee on Ethics and Government Oversight will not 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-stalled-20200705-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.

### **Board Reappointments**

I am pleased to announce that the Mayor plans on introducing the reappointments to the Board of David Daskal and the Honorable Barbara McDonald at the September City Council meeting. The City Council's Committee on Ethics and Government Oversight. At that meeting, Dr. Stephanie Cox-Batson's reappointment will be confirmed as well.

### **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. We have been advised by the Budget Director that we will not suffer any layoffs.

### **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 September 17 I am re-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, all but 60 appointed officials have completed the new annual training for appointed officials. This represents 95% 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 Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

**For all employees and aldermen.** To date, 32,386 employees and all 50 aldermen have completed the program; 37 employees have not, though six (6) are in progress. This puts the City at 99.87% compliance. All but two (2) of those who have not completed the training are City Council employees, working remotely. All will complete it as soon as they can. We are working on the next on-line training and intend to post it in October.

**For lobbyists.** To date, 130 lobbyists have completed the all-new annual on-line training, which is 15.4% of the total. Lobbyists will have until March 1, 2021 to complete it.

### **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**

### **Consultation with Indiana Shared Ethics Commission advocates**

On September 16, I will meet (via Zoom) with 3 members of the Shared Ethics Commission covering Lake, Porter, Newton Counties in Indiana, about setting up their Commission and implementing a training program.

### **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.

**2020 Statements of Financial Interests.** On February 28, notices to 3,616 City employees and officials were sent by 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**. I am pleased to announce that, as of September 9, **we are at 100% compliance!**

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 \$450 in fines from eight (8) late filers and have at least \$200 in outstanding fines. For the one above, fines continue to accrue. 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.

### **Advisory Opinions**

Since the Board’s last meeting on August 17, we have issued 264 informal advisory opinions. The leading categories for informal opinions were, in descending order: Lobbying; Gifts; Statements of Financial Interests; Post-employment; City Property; and Political Activity.

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

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.

### **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.

### **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.

### **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.

### **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 is approval of a settlement agreement in Case No. 19029.IG, pending since October 2019. 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. The Board offered and the respondent accepted an offer of \$2,000, which represents the minimum fine for four (4) violations. The Board voted unanimously to assess the minimum fine for each violation, given the mitigating circumstances respondent presented.

Note: the fines range from \$500-\$2,000 per violation. In 2019, the City Council raised the fine amounts for most violations to between \$1,000-\$5,000 per violation for violations occurring after that laws' effective date of September 29, 2019.

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.

## **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 (1) 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, 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 four (4) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance.

## **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 40<sup>th</sup> Ward Alderman Patrick O'Connor.

## **Litigation**

Lee v. City of Chicago. 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 attempt 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. The plaintiff was granted leave to file an amended complaint, in order to add a facially unconstitutional claim as to the wording of the post-employment provisions. The judge also stated that if the City files a motion to dismiss the matter, she will hear that motion.

Norwood v. City of Chicago. This case was brought by a former Chicago Police Department Sergeant (now retired) in the United States District Court for the Northern District of Illinois in 2018 and was assigned to Judge Sharon Johnson Coleman. It is captioned 18-cv-7270. Plaintiff alleged race discrimination and retaliation claims under Title VII, U.S.C. §§ 1981 and 1983, and a claim under §2-156-019 of the Ordinance, entitled "Whistleblower protection." The City moved to dismiss that count of the complaint brought under the Ordinance on the basis that it does not create a private right of action on behalf of an aggrieved City employee to sue the City in court. On September 2, Judge Coleman agreed and dismissed that count with prejudice. The court did not address whether there is a private right of action available to others who allege that they were punished for bringing to the City's attention claims of misconduct – this would include vendors, applicants for City licenses and permits, etc.

In the Law Department's reading, an employee who wishes to make a whistleblower claim would need to bring it before this Board.

### **Lobbyists-regulation and enforcement**

To date for 2020, there are 844 registered lobbyists – another all-time high – and we have collected \$407,350 in lobbying registration fees. This represents 42% of our budget request for 2021.

Q2 activity reports were due by July 20, 2020. 14 lobbyists filed late. Six (6) of them filed their reports late but still within the grace period before we can assess fines. Thus we published on our website just their names. Six (6) others were late and have yet to file and are accruing daily fines \$1,000. One (1) of the 14 terminated his registration, and the last one (1) filed late and was fined \$3,000.

### **Freedom of Information Act**

Since the last Board meeting, the Board has received five (5) new requests for records.

The first was for records memorializing our communications with various government agencies and others. After we consulted with the Law Department, we responded that the requestor needed to clarify the request.

The second was a second request for an alderman's written commitment to comply with the aspirational code in the Ordinance; as in responding to his first request, we responded that we had no responsive records.

The third made three (3) requests: (i) the blank form for an alderman's written commitment to comply with the aspirational code; we responded we had no such record; (ii) evidence of compliance by the Department of Human Resources of its administering such written commitments; we responded that the request was to the wrong department; and (iii) the procedures for the administration of such written commitments; we responded that the request appeared to ask a question and, further, that it did not specify a record, as the law requires.

The fourth was for a Ward Superintendent's ethics pledge form; we could not locate such a record and advised the requestor.

The fifth was for a Board determination on material donations from third parties to officials or employees; we provided the requestor with a link to our recent advisory opinion on the donation of Covid-related materials that were accepted on behalf of the City for use by the public.