

Executive Director's Report 7/13/20

Staffing during the Covid-19 Pandemic

Except for me, staff members continue to work remotely, but all have come in from time to time to work on tasks that can be completed most efficiently in the office.

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=>

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-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 September 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.

There will be more discussion of potential amendments relating to investigations submitted to the Board by the Office of Inspector General ("IG") in closed session.

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

Education

Classes and other presentations

We have cancelled all classes from March 17 on. We hope to resume them perhaps in August or September or 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.

On-line Training

For appointed officials. To date, 583 appointed officials have completed the new annual training for appointed officials. This represents 87% of the total. We are not going to enforce deadlines for this year's training, due to the Covid-19. 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, 32,306 employees and all but three 3 aldermen have completed the program; 115 employees have not, putting the City at 99.64% compliance. We are in contact with training administrators from all departments with employees who have not completed the training, and with those aldermen who have not yet done so.

Council on Governmental Ethics Laws (“COGEL”)

As the President of COGEL, I chaired a meeting of the Steering Committee last week and we made the painful but necessary decision to cancel the December 2020 in-person annual conference in Atlanta, and instead offer a streamlined virtual conference free of charge to more than 600 COGEL members.

Sister Agency Ethics Officers

On July 16, the ethics officers from the other local governmental agencies will meet 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).

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**.

As of July 2, 69 had not filed, and were sent probable cause notices on July 6, via first class and certified mail. Since then, three (3) have filed. Those who fail to file by 11:59:59 pm on July 14 will be subject to fines of \$250/day until they file. All those who fail to provide a valid reason for not filing by the deadline will be found to have violated the Ordinance. The names and fines of all violators will be posted on our website. As of today at 1:45 pm, there remain 44 who have not yet filed. Later this week we will post on our website the names of all those found to have violated the law by failing late, and those assessed fines.

Forms are posted on our website as soon as they are processed by staff – our goal is to have all filed forms posted within 24 hours of when they are filed. Once posted, they reside on the Board’s website for seven (7) years from the date of filing, after which they are removed and destroyed, pursuant to the Board’s Document Retention Schedule kept with the Illinois Secretary of State and Local Records Commission of Cook County.

Advisory Opinions

Since the Board’s last meeting on June 15, we have issued 313 informal advisory opinions. One formal advisory opinion is on today’s agenda. The leading categories for informal opinions were, in descending order: Statements of Financial Interests; Lobbying; City Property; Gifts; and Outside employment.

The leading City departments from which requesters came in this period were (in descending order): Mayor’s Office; City Council; Police Department/Civilian Office of Police Accountability (COPA); Department of Public Health; Department of Streets & Sanitation; Department of Aviation; and Department of Planning & Development.

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 908), 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 six (6) and denied two (2). By law, we make all granted waivers public on our website. A request for a ninth is on today’s agenda.

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 finding of probable cause, 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 one, 19029.IG, the

Board will meet with the subject and his counsel. It involves potential violations of the Ordinance's post-employment, prohibited conduct, confidential information, and conflicts of interest provisions. The second, 20005.IG, involves the filing false or misleading Statements of Financial Interests, and subject submitted written materials to the Board but declined the opportunity to meet with the Board.

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 40th Ward Alderman Patrick O'Connor.

Litigation

On June 26, the City was served with a lawsuit, filed against the City 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. It was assigned to the Honorable Chancellor David Atkins, but the plaintiff moved for a substitute of judges (SOJ), and the Law Department is not objecting. The plaintiff left City employment on February 28, 2020 and works as an attorney for the Policemen's Benevolent and Protective Association. The suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague, and improperly attempt to regulate the practice of law by Illinois attorneys. It prays for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. We are working closely with the Law Department on the City's answer, due July 27.

Lobbyists-regulation and enforcement

To date for 2020, there are 813 registered lobbyists, and we have collected \$385,350 in lobbying registration fees. The Board extended the filing deadline for Q1 activity reports to June 1, 2020. On July 7, I found five (5) lobbyists in violation of the Ordinance for failing to file their reports on time, assessed two (2) fines of \$1,000 each; one (1) has not filed is accruing fines of \$1,000/day until he files. The other two (2) filed before the fine period. All violations were posted on our website that day.

Q2 activity reports are due July 20, 2020.

Note that we discovered a glitch in the ELF (Electronic Lobbyist Filing) system in November 2019 whereby the compensation reported by lobbyists for the second, third and fourth quarter was combined with compensation reported in previous quarters, and then posted erroneously into the public interface of the program, which is on a SOCRATA platform. I am pleased to report that programmers at the Department of Assets and Information and their contractors at Electronic Knowledge Interchange fixed this problem and we announced the fix publicly on March 2, 2020.

Freedom of Information Act

Since the last Board meeting, the Board has received four (4) requests for records.

The first was for information on certain real estate in Chicago; we responded that we are the wrong department.

The second was for: (i) lists and opinions about post-employment; (ii) lists and board-initiated enforcement actions with their reports or orders about post-employment; and (iii) and lists and summaries of adjudications of OIG-completed investigations about post-employment. We responded by providing links to appropriate Board website pages and a denial as to producing underlying confidential records.

The third was for information on connections between the media and the requestor and sent to most City departments. In consultation with the Department of Law, we responded by stating that only records (not answers to questions) must be produced and, because the request was burdensome, asked for clarification.

The fourth was for emails with respect to building expeditors. We responded that the request was burdensome and asked for clarification and for email search identifiers to perform a search.