

Executive Director's Report September 11, 2023

Amendments to the City's Ethics Laws

We posted a draft of the Board's proposed amendments to the City's ethics laws after last month's Board meeting, and sought public comment. We have received one set of comments, from the Better Government Association (BGA), which we greatly appreciate. The BGA's comments are attached to this Report. If the Board so votes, we will finalize our proposals and forward them to the Mayor and full City Council, through the Chair of the Council's Committee on Ethics and Government Oversight, 47th Ward Ald. Matt Martin. The Board would submit them pursuant to its power and duty under §2-156-380(f) of the Governmental Ethics Ordinance.

The Board's proposals: i) address various aspects of the Ordinance's regulation of City Council independent contractors, in light of a media stories from June; ii) address the use of photographs of City property (such as Chicago Police or Fire Department insignia, badges, uniforms, or equipment) in electioneering communications); iii) clarify the political activity prohibitions; and iv) address closing a gap in the City's campaign contribution limitations law.

The proposals do *not* address changes to the City's lobbying laws, or the latest proposals to make the position of Alderperson full-time. (Those are, respectively, the subjects of O2023-0002937:

<https://occprodstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/c818c624-07b7-4297-9821-549ab3c0b0ce.pdf>,

O2023-2167:

<https://occprodstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/b6c99d86-fa94-4462-9d4a-14f7f1c6e2ff.pdf>

and O2023-0002228:

<https://occprodstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/66607fc5-83d1-40e9-a76d-4771988d09cb.pdf>).

However, we have researched how our peer cities handle this City Council outside employment issue (New York City, Philadelphia, Washington DC, Atlanta, San Diego, Los Angeles, San Francisco, and Seattle), and will make this information available to the public and the City Council's Committee on Ethics and Government as appropriate.

As to lobbying law revisions, Board legal staff have been meeting with representatives from the Mayor's Office, City Council's Committee on Ethics and Government Oversight, and the philanthropic and public charity communities on amendments to the lobbying laws to provide for registration by individuals who lobby on behalf of non-profit organizations. On July 19, Chair Martin introduced O2023-0002937 to the City Council. It includes activity and/or compensation thresholds, such that individuals would be required to register once they lobby a specified number of hours in a calendar quarter and/or are compensated a specified amount or more for lobbying in a calendar quarter. Notes: 1) this is similar to how peer cities like New York, Philadelphia, and Los Angeles regulate lobbying on behalf of non-profits and others; and 2) as in some of those cities, it will require personnel who lobby to keep time records, and make reasonable calculations as to their hours and compensation (as many are not compensated explicitly for lobbying, unlike for-profit contract lobbyists).

New Staff member

I'm pleased to introduce Dalina Bailey, who joined our staff on September 1 as a Program Manager. She will work on our lobbying and social outreach programs, and on managing the resumption of in-person training.

2023 Statements of Financial Interests

On February 28/March 1, as required by law, we notified 3,925 City employees and officials required to file 2023 Statements of Financial Interests ("FIS forms") of their requirement to file before Tuesday, May 2, with the link to file electronically. We were in regular contact with our ethics liaisons in all departments, ward offices, and City Council committees, sending them the names of those who've not yet filed. As provided by law, we sent all non-filers regular reminders to file by the deadline. On May 15, we found 70 officials and employees in violation of the Ethics Ordinance, though that number was reduced to 62, given additional facts we subsequently learned.

All required filers have now filed--we assessed a total of \$16,750 in fines. All of this is posted on our website, here: <https://www.chicago.gov/content/dam/city/depts/ethics/general/FIS/2023/2023%20FIS%20Violations%20Posting%20May%2015.pdf>

All filed forms are posted and viewable here, where they stay for seven (7) years after they are filed: <https://webapps1.chicago.gov/efis/search>

Finally, all newly elected officials, including members of the Community Councils for Public and Safety and Accountability (CCPSA) filed before they took their oath of office, and we posted their forms on our website as well.

Education

On-line Training

For all employees and officials. To date, approximately 24,650 employees (and 20 City Council members) have completed the 2023 mandatory online training (about 72% of the expected total). In particular, we want to call out the Chicago Police Department (“CPD”) for singular mention—it is already at 95% completion. The deadline for completing the training is before January 1, 2024.

We are grateful to our colleagues at the Department of Human Resources for their invaluable assistance in migrating the training programs to the City’s e-learning management platform, as well as assisting us with the sexual harassment portions of each year’s training program. The migration enables users to take the training from *any* computer, including their home computers, and also saves the City \$5,000 in annual software licensing fees. Previous training programs were intentionally designed to be taken only from City computers, for security reasons.

For all appointed officials. To date, 246 appointed officials (approximately 54% of the expected total) completed the all-new appointed official version of the training; their deadline is also before January 1, 2024.

For lobbyists. All but five (5) registered lobbyists did not complete the training by the deadline, which was before July 1, 2023. They were found in violation of the law and three (3) were fined \$250; one (1) of these *still* has not completed the training and is accruing a daily \$250 fine. As required by law, we posted this information on our website here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/edu/news/2023/july/lob-training.html>

Classes and other presentations

We cancelled all in-person classes from March 2020 on, given the course of the pandemic. We extended all training deadlines accordingly, and will restart them in January. All Board classes and educational programs cover sexual harassment. We will resume these classes as soon as feasible, and are working to set up classes in our Boardroom (at least one each week), and reaching out to all City Council offices to schedule classes for them at Chicago Public Library facilities or their offices. We are also in the process of scheduling in-person classes for Mayor Johnson and key members of his team.

We will present a class to personnel in the Mayor’s Office on September 21, and to the 34th Ward on September 15.

On August 18 and 25, we presented classes to incoming laborers from various departments, and will conduct classes for more laborers on September 15 and 29, and October 6, 20, and 27.

Advisory Opinions

Since the Board’s last meeting, we have issued 299 informal advisory opinions. The leading categories for informal opinions were, in descending order: Travel; Gifts; City property; Post-employment/revolving door; Outside employment; Lobbying; Political activity; and Prohibited conduct/reverse revolving door.

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)/Community Commission for Public Safety and Accountability (CCPSA); Mayor’s Office; Department of Finance; Department of Public Health; Law Department; Office of Inspector General; Chicago Public Library; and Department of Aviation. 66% of all inquiries came from City employees or elected officials, the remainder from attorneys, vendors, or lobbyists or potential lobbyists.

Again, I am pleased to report that the number of inquiries and complaints from members of the public continues; we received more than one dozen in this period alone.

Informal opinions are confidential and 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 67 formal opinions. There are no formal opinions on today's agenda for consideration.

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 920), redacted in accordance with the Ordinance's confidentiality provisions, here:

https://www.chicago.gov/city/en/depts/ethics/auto_generated/reg_archives.html.

Redacted formal opinions are posted once issued or approved by the Board. Summaries and keywords for each of these opinions—and a link to each opinion's text, which we added since the August Board meeting—are available on the Board's searchable index of opinions, here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/AOindex.docx>.

Only a few 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.

Lobbyists Filings

836 lobbyists are currently registered with us, and we have collected \$383,050 in 2023 registration fees. A current list of all lobbyists and their clients was posted last Friday, here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/LobbyistStuff/LISTS/LobbyistList.xls>

Lobbyists' filings dating back to 2014 can be examined here: https://webapps1.chicago.gov/elf/public_search.html

Second quarter lobbying activity reports were due before July 21. On August 28, we determined that four (4) lobbyists violated the law for failing to file their second quarter reports on time, and fined three (3) of them \$250 each, which they paid. Their names, violations and fines were posted on our website as required by law.

Sister Agencies

At the request of the Ethics Officer of the Chicago Public Schools (CPS), we reviewed and provided comments on draft revisions to CPS's ethics policy, and reviewed the ethics policy of the Chicago Park District. We met with our fellow ethics officers from all the sister agencies, as well as the Cook County Board of Ethics and Cook County Assessor's Office, on June 15. Our next meeting will be on October 19.

Update of Vendor Databases

As required by law, the City's Department of Assets, Information and Services ("AIS") maintains a database of persons/entities that are doing and have done business with the City (as that term is defined in the Ordinance) going back about eight (8) years, to aid political committees and candidates who receive political contributions in excess of \$1,500. That database was first developed in 1998. Recently we worked closely with the Mayor's Office, AIS, the Department of Finance, and the Department of Procurement Services to improve that database, and met with the City's sister agencies to assist them in making their lists of persons that have done business with them available and easy-to-use. The Ordinance provides that any person who relies on this list is not in violation of the Ordinance's contribution restrictions if the purported violation relates to the identity of the contributor. The new, improved database of persons who have done business with the City was posted here: https://www.chicago.gov/city/en/depts/ethics/supp_info/list-of-contractors.html and several sister agencies have updated their databases as well.

Chicago Casino

As to the development of the Casino, we issued guidance on lobbying to all elected officials, at former Mayor Lightfoot's request, and we issued guidance on the restrictions in the Ordinance for the ~80 City employees and officials who worked on the process of selecting the Casino operator, also at Mayor's request. We worked closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City personnel are informed of all reporting (and eventually, substantive ethics) requirements and prohibitions under the Illinois Gambling Act, 230 ILCS 10/1 et seq. Penalties for violating this law are severe: it is a Class 4 Felony under Illinois law, subjecting violators to fines up to \$25,000 and 1-3 years in prison. Note that the Gambling Act's reporting requirements are in addition to the restrictions in the 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.

Given that the temporary casino in Medinah Temple may be operational by the date of the Board meeting, we worked with the Law Department on final guidance to be sent to all City governmental personnel as to applicable ethics rules, such as accepting gifts or food or drink—this guidance was issued on Friday, September 8.

Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted eight (8) and denied three (3) waiver requests.

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

We post a 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, based on probable cause findings the Board makes as a result of its review of publicly available information, where no factual investigation by the IG is necessary. *See*

<https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/Invest-Index.pdf>

The Board makes public the names of all violators and penalties it assesses when authorized by law to do so. But only in those that occurred after July 1, 2013, can the Board release the names of those found to have violated the Ordinance. Since July 1, 2013, there have been nearly 90 such matters.

Summary Index of Ongoing/Past IG/LIG Investigations/Adjudications

There are currently four (4) completed IG ethics investigations awaiting or in the process of adjudication. Two (2) of these (23045.IG and 23041.IG) are on today's agenda for a subject meeting, pursuant to §2-156-385. A third (23043.IG) was returned to the IG for further investigation, and the fourth (23050.IG) is on today's agenda for a finding of probable cause.

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 Office of Inspector General (17 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/city/en/depts/ethics/provdrs/reg/svcs/ongoing-summary-of-enforcement-matters.html> and

<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 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 the ethics investigation was commenced within five (5) years of the last alleged act of misconduct.

If the Board finds that the evidence presented warrants a 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 also request clarification from the IG as to any evidence found in its investigation before making a probable cause finding, or refer the matter back to the IG for further investigation (and 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 does not rebut the Board’s probable cause finding, the Board may enter into a public settlement agreement– or the Board may find there was a violation and the Board or the subject may proceed to a hearing on the merits that is not open to the public. That hearing is 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 that 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 violations of the Ethics Ordinance and impose appropriate fines, or find no violation and dismiss the matter.

These processes are based on specific recommendations of then-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; (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 adjudication by the Board and the public’s right to know of ethics violations.

On our website, we have a publication describing this process in detail:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

Note: fines range from \$500-\$2,000 per violation for non-lobbying or non-campaign financing violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for such violations occurring between September 29, 2019, and September 30, 2022. For violations occurring on or after October 1, 2022, the fine range is between \$500 and \$20,000 per violation, and the Board may also assess a fine equal to any ill-gotten financial gains as a result of any Ordinance violation. Fines for unregistered lobbying violations remain at \$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. All settlement agreements are posted here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/SettlementAgreements.html>

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 they 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 they 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.

Litigation

Lee v. City of Chicago. I’m pleased to report that this matter has been settled; pursuant to the Settlement, the plaintiff, an attorney, will pay the Board \$5,000, and the plaintiff’s employer, the Policeman’s Benevolent and Protective Association, will inform future hires directly from the City of Chicago of their post-employment obligations. In June 2020, the plaintiff sued the City in Cook County Circuit Court, Chancery Division, alleging that the Ordinance’s post-employment provisions were unconstitutionally vague, and that the City improperly attempted to regulate the practice of law by Illinois attorneys. The judge dismissed all counts except as as-applied constitutional challenge, and the Settlement Agreement dismisses that count. The next status hearing before Judge Demacopoulos is scheduled for September 14. We will post the agreement once the Judge enters it. The Board aggressively enforces the Ordinance’s post-employment provisions, and will not allow future departing employees or officials to get away with violations of these provisions.

Brookins v. Board of Ethics, et al. I'm pleased to report that this matter has also been settled. The former Alderman sued the Board, and sued me personally for defamation *per se*, after the Board determined in December 2020 that he had violated the Ordinance's fiduciary duty provision by serving as a City Council member (which includes voting on matters involving the Chicago Police Department, such as confirming a new Superintendent, or voting to approve settlements of lawsuits involving alleged police misconduct) while at the same time representing criminal defendants in court cases where CPD members were involved, and fined him \$5,000 for the violation. He then sued. All counts of the lawsuit, including the count against me, were dismissed, except one, alleging that the Board exceeded its authority by finding a violation without receiving a completed report of an investigation by the IG. Under the terms of the Settlement Agreement, this last count is being dismissed, and the Board is agreeing not to pursue the fine or any other remedies it has. After the Board voted to ratify the settlement agreement, the plaintiff made comments to the media that are unfortunate, claiming he was "exonerated." There has been no "exoneration." The principle still holds that his conduct violated his fiduciary duty to the City as a member of the City Council member—a City Council member cannot represent defendants in criminal cases involving members of the Chicago Police Department, where, as an attorney, the City Council member is duty-bound to challenge the work of the CPD and questions its member's credibility, and also, as a City Council member, vote on proposed settlements of cases involving alleged CPD misconduct, or vote to confirm a new CPD Superintendent or to approve the CPD's budget. In *any* future case, the Board will enforce its determination with the law's full force and effect. For reasons of utility, the Board opted not to pursue an action to require plaintiff to provide an accounting and then disgorge ill-gotten gains--litigation that could be protracted and last years. We will post the agreement as soon as the case has been officially dismissed by the court. The Board's reasoning is explained in this advisory opinion:

https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_ElectOfficials/A19027.A.pdf and this denial of reconsideration of that opinion: <https://www.chicago.gov/content/dam/city/depts/ethics/general/AO-Attorneys/19027.AReconsid.pdf>

Czosnyka et al. v. Gardiner et al., docket number 21-cv-3240. The Board and the City of Chicago were dismissed out of this case. On June 17, 2021, six (6) individuals residing in the 45th Ward filed a lawsuit in United States District Court against 45th Ward Ald. James Gardiner and the City, alleging that their 1st Amendment rights were violated by the Ald.'s improper blocking of them on his "official" City social media accounts. The plaintiffs sought certification of a class of all those improperly blocked by the Ald. The suit also alleged that more than 20 complaints of improper blocking were filed with the Board and the IG, but the City "failed to take any action to reprimand Alderman Gardiner, although it has the power to do so," and thus "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. The case is before the Honorable Judge Sharon J. Coleman. In 2022, both the Board and IG received subpoenas from the plaintiff for internal records on this matter. We coordinated our response with the Law Department.

Open Meetings Act Challenges

The Board is involved in two (2) challenges filed in late 2022 with the Illinois Attorney General by the same person requesting reviews of the Board's discussions in Executive Session at two separate 2022 Board meetings. The Board worked with the Law Department and responded to each. The Board awaits replies from the Illinois Attorney General.

Freedom of Information Act

Since the last Board meeting, the Board has received three (3) requests.

The first request was for records regarding minutes and recordings; we responded that we had located but had already sent these records.

The second request was for updated information on a 2021 FOIA request; we responded that we located no records.

The third request was for any and all documents pertaining to or including a certain name; we responded that the request should be clarified and narrowed.

Employee Vaccination Status

I'm 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.



Better Government Association
223 W Jackson Blvd, Suite 300
Chicago, Illinois, 60606

312.427.8330 P
312.821.9038 F
www.bettergov.org

BGA Supports Proposed Ethics Ordinance Updates from Chicago Board of Ethics

In an [August memo](#), the Chicago Board of Ethics recommended updates to the city's ethics ordinance, focusing on four major change areas:

- Regulation of independent contractors working for the city council as city employees for purposes of the ethics ordinance, including financial disclosure requirements
- Clarifying restrictions on use of city uniforms and insignia (or their close equivalents) in campaign literature and video
- Closing a campaign finance loophole that allows the owners of corporate entities to make contributions in both their own name and the name of their owned businesses
- A ban on lobbying in the areas around the City Council chambers, including the annex and secured hallways

The Better Government Association supports the proposed changes. The board's language clarifies existing regulations and ensures that Chicago's ethics ordinance is fully and correctly applied to public servants and entities doing business with the city.

In addition to the board's proposed changes, the Better Government Association urges City Council to

- Apply campaign finance restrictions on "entities doing business" with the city to businesses listed as subcontractors on city contracts, as well as the primary contractors
- Codify a full ban on former lawmakers from City Council floor and chambers

These common-sense reforms would strengthen the city's pay-to-play protections and eliminate a last vestige of old, machine-politics privilege. Both fit easily within the existing framework of the ethics ordinance, and are worthy of consideration and adoption by City Council.

The Better Government Association is a 100-year-old civic watchdog that seeks better government through investigative journalism, policy reforms and civic engagement efforts that lead to more open, equitable and accountable government. The policy team and investigative unit operate independently of one another, while both seek to advance the cause of better government in Chicago and across Illinois.

###