

Executive Director's Report **10/29/19**

Amendments to the Ordinance

As was widely reported, amendments to the Governmental Ethics Ordinance were passed in late July by the City Council. They grant jurisdiction to the Office of Inspector General ("IG") over all City Council committees and give the IG authority to audit these committees (a question raised at the Committee hearing was whether the IG could audit individual aldermen, a question to which I do not know the answer), and commence investigations with or without a complaint, and enable the IG to commence investigations based on anonymous complaints; (ii) enable the IG to work with the Law Department to enforce its own subpoenas; (iii) enable the IG to investigate ethics violations that occurred not more than five (5) years after the most recent alleged bad act, as opposed to two (2) years under current law; (iv) amend the definition of lobbyist so that a person who lobbies on behalf of any non-profit would need to register if compensated for this activity, or undertakes to lobby on behalf of any non-profit as a matter of professional engagement, even if *pro bono*, but would also enable the Board to waive the registration fees for lobbyists who are paid but lobby only on behalf of a single 501(c)(3) non-profit; (v) prohibit alderman and other City elected officials and employees from representing or deriving any income or other tangible benefit from the representation of persons in any judicial or quasi-judicial proceedings (a) where the City is an adverse party; or (b) that may result in an adverse effect on City revenue or finances, or the health, safety, welfare or relative tax burden of any City residents; (vi) prohibit City employees and officials from deriving income from providing opinion evidence against the City; and (vii) raise the maximum fine for ethics violations (other than for late filing or late training or late lobbyist registration) to \$5,000, from the current \$2,000. (This Board had recommended, among many other things, that the maximum fines be raised to \$20,000.)

The IG provisions and penalty provision took effect on September 28; the representation provisions take effect on December 17, 2019, and the non-profit lobbying provisions take effect on January 1, 2020.

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

Since the Board's last regularly scheduled meeting, 167 employees and officials have attended classes conducted here on September 19 and 26, and October 8, 17 and 29. 60 are scheduled for classes here on November 5, 14 and 19.

All Board classes cover sexual harassment.

On October 2, staff presented a 90-minute ethics training class to employees from the Civilian Office of Police Accountability ("COPA") at the invitation of its Executive Director.

On October 4, staff presented two 90-minute seminars to more than 80 representatives from non-profit agencies located in greater Chicago, to discuss the amendments to the lobbying laws that take effect on January 1, 2020. The classes were held at Forefront Chicago, at the invitation of its Policy Director. We were grateful for the opportunity. On October 30, we will make a similar presentation at the YMCA, at the invitation of its Senior Director of Government Relations.

On October 9, I appeared in a TV interview with two journalists from Pristina, Kosovo, talking about the Board's work. I am to be notified when the segment airs in Kosovo and hope its producers will send over a YouTube link. One of the journalists had visited our office in June 2017!

On October 11 I spoke on campaign financing at the ABA's State and Local Government Section's Fall CLE Conference, in St. Paul, MN. This program will be repeated in a live webcast on January 27, 2020.

On October 17, I appeared with former State Senator Daniel Biss and Common Cause Executive Director Jay Young at a Public Newsroom, hosted by City Bureau. This was at the invitation of Daniel Wolk.

On October 28, we will present a class to a BACP employee who was the subject of the Inspector General investigation, at her department's request.

On November 12 and 14, we will present classes to two new aldermen and their staff, 39th Ward Alderman Samantha Nugent and 33rd Ward Alderman Rossana Rodriguez Sanchez, respectively.

On November 20, I will present a class to the members of the Board of Health, at the request of its Chair.

On January 10, I will make a presentation to the Chicago Bar Association's Election Law Committee, at the invitation of its Chair.

We are scheduling two classes: the first, on campaign financing and political contributions, for contract specialists in the Department of Procurement Services, at the request of the Chief Procurement Officer (that office has been helpful in identify potential campaign financing law violations in the past); the second, on political activity, for employees of the Department of Aviation, at its Commissioner's request.

On-line Training

For appointed officials. We completed a PowerPoint for all appointed officials, including members of this Board, and will email it to all appointed officials, and have them complete it, with the Assistance of the Office of Legislative Counsel and Government Affairs (which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials).

For all employees and aldermen. To date, approximately 9,600 employees and 2 aldermen have completed the program. 234 are in progress.

Council on Governmental Ethics Laws ("COGEL")

COGEL's 2019 annual conference will be here in Chicago, at the Michigan Avenue Marriott from December 15-18. We are working closely with the Mayor's Office, City Council, and Budget Office to ensure a successful conference. We expect about 450 ethics, campaign financing, lobbying, freedom of information, and election administration officials from across the U.S. and Canada to attend, plus private practitioners and academics. We serve on the conference's program committee and have already reached out various elected and appointed officials, attorneys, public figures, and media personnel to serve on panel discussions or otherwise contribute to the Conference. We will co-host the Conference with our colleagues at the Chicago Board of Election Commissioners, Illinois State Board of Elections, and Illinois State Executive Ethics Commission, and possibly other local agencies involved in ethics or freedom of information administration.

As President-elect of COGEL, I also serve on the Program and Host committees, and continue to Chair the Publications committee. The 2019 Conference is an opportunity to showcase our agency, our mission, our ethics, campaign financing, lobbying, and election administration colleagues at the City, County, and State levels. And I am hoping that our Board members will lend support to make the 41st Conference nonpareil.

Executive Editorship – Public Integrity/Guardian issue

I am a member of the Executive Editorial Board of the journal Public Integrity, which is affiliated with the American Society for Public Administration. It is published by Taylor & Francis six (6) times a year. We are in the midst of a joint project between this journal and the COGEL Guardian to bridge gaps between academics and practitioners. The first edition of the 2019 COGEL Guardian was published on May 31, and the second on August 27. The next issue will be published around November 15.

Sister Agency Ethics Officers

We met on October 17 with our ethics counterparts at other local governmental agencies: the Cook County Board of Ethics and the Ethics Officers from the Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, the Cook County Assessor's Office, and Chicago Housing Authority.

2020 Budget

Our budget allocation for 2020 is \$873,629 (subject to City Council approval). This represents a .008% increase over our 2019 allocation. We will have our budget hearing this coming Friday, November 1.

Advisory Opinions

Since the Board's last meeting on September 13, we have issued 572 informal advisory opinions. The leading categories were, in descending order: Gifts; Travel; Lobbying; Conflicts of Interest/Improper Influence; Outside Employment (including outside volunteer service); Political Activity; and City Property.

The leading City departments from which requesters came in this period were (in descending order): Chicago Police Department; Mayor's Office; City Council; Department of Buildings; Department of Public Health; and Procurement Services; and Chicago Public Library.

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 906 of them), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. Further, 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 three (3), each involving a former City employee. By law, we make these waivers public.

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 (including five (5) on today's agenda), 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 nine (9) since July 1, 2013, the last of which is on today's agenda for a finding of probable cause) 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. It is updated 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 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 two (2) 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>

There is one new IG matter, presented to us on September 4. It involves potential violations of the Ordinance's post-employment, prohibited conduct, confidential information, and conflicts of interest provisions. Staff will make its recommendation as to a preliminary probable cause finding at today's meeting.

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, one (1) mid-level City employee in an operating department, 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.

As noted above, the Board received a completed investigative report from the IG on May 26, 2017, with a petition for a probable cause finding. The case was based on the Board's earlier conclusion that the subject appeared to have committed a non-minor past violation of the Ordinance, then advised the subject of the self-reporting-to-the-IG provisions in the Ordinance. After the IG investigated and confirmed the Board's earlier conclusion, the matter was settled for a \$1,500 fine. The agreement is posted on our website.

In the three (3) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance.

Lobbyists-regulation and enforcement

To date for 2019, there are 789 registered lobbyists. We have collected \$448,950 in lobbyist registration fees—representing more than 50% of our annual budget.

Third Quarter lobbying activity reports were due before the close of business Monday, October 21. To date, 23 lobbyists have not filed them, which is a 97% compliance rate. By law, we will notify those who haven't filed, and if they do not file by the statutorily mandated period, find them in violation of the Ordinance, fine them \$1,000 per day until they do file, and make their names and violations public.

Note that we discovered a recent glitch in the ELF (Electronic Lobbyist Filing) system, whereby the compensation reported by lobbyists for the second, third and fourth quarter is combined with compensation reported in previous quarters, and then posted erroneously into the public interface of the program, which is on a SOCRATA platform. We are continuing to work with programmers at the Department of Innovation and Technology to fix this problem.

Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received four (4) new requests under the Freedom of Information Act. The first request was for records over many years involving a City employee. After exchanging emails about the requestor narrowing the request, this agency advised the requestor it had no records responsive to the request. The second request was for subpoenas received by the Board since 2016 and this agency provided the sole subpoena received, and the materials turned over in response to thereto. The third request was for lobbyist records of Hunter Biden and this agency advised that it had no such records. The fourth request was for City actions involving a parcel of real estate, and this agency responded by advising the requestor that the Board was the wrong department to which to send a FOIA.