

Executive Director's Report 7/19/19

Amendments to the Ordinance

On Wednesday, July 16, I testified for two hours before the newly-formed City Council's Committee on Ethics and Government Oversight on the proposed package of ethics reforms. The package passed unanimously and will be presented to the full Council for a final vote on July 24, 2019.

Assuming it passes as is next week, it would: (i) extend the jurisdiction of the Inspector General ("IG") to 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 stated so on the record), and commence investigations with or without a complaint, and enable it 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 would take effect 10 days after passage and publication; the representation provisions 90 days after passage and publication, and the lobbying provisions on January 1, 2020.

We are gearing up for a large educational initiative for the non-profit community.

As to the Board's own suggested amendments, they were published on May 30, and there have been several media accounts about them. The Mayor has said on several occasions that the current round of ethics amendments is not necessarily the last round of such amendments.

Education

Classes and other presentations

Since the Board's last regularly scheduled meeting, 58 employees and officials attended classes here on June 20 and July 9 and 18. There are 80 scheduled for classes here on July 23 and August 8, 20 and 27.

All Board classes cover sexual harassment.

On June 17, I presented a class to 8th Ward Alderman Sawyer and his staff; on June 25 I presented a class to 50 senior officials from the Department of Business Affairs & Consumer Protection at the request of its Commissioner; on June 28 I presented a class to 38th Ward Alderman Sposato and his staff; on July 8th I presented a class to 45th Ward Alderman Gardner and his staff; and on July 9th I presented a class to 47th Ward Alderman Martin and his staff.

On July 17, at the invitation of the Clerk of the City of Evanston, I participated in a panel discussion with the Chair and a member of Evanston's Board of Ethics. The discussion focused on lobbyist registration, whistleblower protection, and duty to report corrupt activity provisions.

On July 25th I will present a class to 1st Ward Alderman LaSpata and his staff.

Classes for all other newly elected aldermen and their staff are being scheduled currently.

On August 21, at the request of the Mayor's Office and U.S. State Department, I will make a 60 minute presentation to a group of visiting ethics and transparency specialists from Afghanistan, Antigua & Barbuda, Armenia, Belize, the Czech Republic, India, Kosovo, Liberia, Malawi, Mexico, Moldova, Nepal, Nigeria, North Macedonia, Pakistan, Romania, Slovenia, South Africa, Tunisia and Ukraine.

I will also speak on campaign financing at the ABA's State and Local Government Section's Fall CLE Conference, in St. Paul, MN, on October 11.

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 lobbyists. The deadline for lobbyists to complete their 2018-2019 program was before July 2. Seven (7) did not comply and, after affording them the opportunity to present a valid reason for their lateness, we determined that they violated the Ordinance and posted their names and violations on our website on July 17. They all completed the training before the fine period commenced, which was July 17.

For all employees and aldermen. We began drafting this training, but have delayed it, due to Ordinance amendments.

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. The next issue will be published around August 15.

Sister Agency Ethics Officers

We met on June 27 with our ethics counterparts at other local governmental agencies: the Cook County Board of Ethics and the Ethics Officers from the Chicago Public Schools, City Colleges of Chicago, and Chicago Housing Authority. The next quarterly meeting is scheduled for October 3.

2020 Budget

We are in the process of preparing our agency's 2020 budget request. We are asking for no increases, and will come in at about \$750 below our 2019 appropriation, which is \$866,882. Because the 2020 COGEL Conference will be in Atlanta, and 2019's is here, we are asking for an increase in our travel appropriation, but were able to make up for that increase by decreasing our professional and technical services account request.

Office Furniture

I'm pleased to announce that the Board will receive about 20 chairs for the boardroom, to replace these current swivel/adjustable height chairs, which we have had since 1998. The Law Department accepted a gift of about 800 chairs from the law firm of Holland & Knight, which the firm no longer needs, and has graciously offered us these chairs.

2019 Statements of Financial Interests

On March 1, we sent filing notices to 3,688 City employees and officials (via email and U.S. first class mail notices regarding their requirement to file their 2019 Statements of Financial Interests before June 1. This includes individuals 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. 42 employees and officials were determined to have violated the Ordinance for late filing. We posted their names on our website, after they were afforded the opportunity to present a valid excuse for their late filings. As of this writing, all but one (1) has filed. To date we have assessed \$7500 in fines; the fine period began June 17. Fines are \$250 per day until filing.

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 our 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 14, we have issued 353 informal advisory opinions. The leading categories were, in descending order: Gifts; Travel; Lobbying; Outside Employment; Campaign Financing; City Property; and Statements of Financial Interests.

The leading City departments from which requesters came in this period were (in descending order): City Council; Mayor's Office; Chicago Police Department; Department of Law; Office of Inspector General; Department of Public Health; and Department of Business Affairs and Consumer Protection.

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 905 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, 122 such matters (including two (2) 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 49 such matters. Eight (8) of these matters have involved apparent campaign financing violations; 34 have involved unregistered or undisclosed lobbying.

The document makes clear that, despite comments made in the media over the last decade, the Board has been a robust enforcement agency, though rarely acknowledged as such. This continues through the Board's ongoing regulatory actions, described above, and with respect to lobbying and campaign financing, even though the Board no longer has investigative authority.

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 eight (8) since July 1, 2013, the last of which is on today's agenda for final disposition) 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>

After today, there may be no pending IG matters. Specifically:

In Case No. 18039.IG (corresponding to IG Case # 17-0082), the final investigative report was sent to our office on November 30, 2018. The case involves prohibited gifts offered to a current and a now-former City employee from a City subcontractor. At the Board's February 2019 meeting, it determined that the subcontractor and current City employees committed minor violations. Staff sent a detailed explanation to the IG explaining the Board's determination. The Board found probable cause to conclude that the former City employee violated the Ordinance, and a subject meeting was held on June 14, though the Board had no quorum and was unable to render a determination. The matter is on the agenda for today's meeting. The subject, a former employee, could be subject to a fine between \$1,001 and \$5,000.

There are no other pending investigations from the IG.

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.

There is no legal requirement imposed on the IG to report back to the Board on any actions it takes on matters or persons referred to it by the Board, unless the IG completes an investigation and submits a petition for a finding of probable cause to the Board based on that investigation. This is unlike the arrangement in New York City between its Conflicts of Interests Board and Department of Investigation.

Lobbyists-regulation and enforcement

To date for 2019, there are 758 registered lobbyists. We have collected \$402,950 in lobbyist registration fees.

Second Quarter lobbying activity reports are due before Tuesday, July 23. On June 28, all lobbyists were sent reminders of their deadline via email. As of this writing, 490 have filed their reports.

Freedom of Information Act

Since the last regularly scheduled Board meeting, the office has received two (2) new requests under the Freedom of Information Act. The first request was for all subpoenas received by the Board since January 1, 2017 from Federal law enforcement offices and any documents turned over by the Board pursuant to the subpoenas. After consulting with the Law Department, the Board responded to the requestor by producing one subpoena and the materials turned over to the United States Attorney's Office pursuant to that subpoena. The second request was for intergovernmental agreements; the Board responded that it was the wrong department to whom to direct such a FOIA request.