

Executive Director's Report 6/14/19

Amendments to the Ordinance

Recent Ordinance amendments, effective May 29, do a number of things: (i) provide that if City Council committee chairs recuse as required by the Ethics Ordinance from more than four (4) distinct matters in a 12-month period, they must end the business relationship that gives rise to the recusal, or step down from their Committee chairmanships (Rule 14 disclosures not required by law do not count); (ii) clarify long-standing Board-made law (see Case No. 00008.A,

https://www.chicago.gov/dam/city/depts/ethics/general/AO_ConflictOfInterest/00008-AO-redact.pdf) that a City Council member may not preside as Chair or Vice Chair over any parts of City Council committee meetings from which he or she must recuse; (iii) require more detailed disclosure about matters from which a City Council member is recusing, such as the nature of the relationship giving rise to the recusal and when it originated; (iv) require continued amendment of one's filed Statement of Financial Interests to show new reportable interests with 30 days of such occurrence; (v) extend the definition of those "seeking to do business with the City" and thus subject to the Ordinance \$1,500 per calendar year/per candidate political contribution limit to those who have had certain types of specified matters pending before the City Council during the period six (6) months before the matter was introduced and after the matter was introduced; and (vi) beginning 2020, move the filing deadline for most Statements of Financial Interests filers to May 1, from May 31.

We published the changes the day they become effective.

We are following with great interest the ethics reform proposals submitted by the Mayor at the City Council June 12 meeting, and we attended three (3) aldermanic briefings on them on June 5. I anticipate testifying before the newly formed City Council Committee on Ethics and Good Governance, chaired by 43rd Ward Alderman Michelle Smith. She and I have spoken at length about these proposals. The Mayor's proposals would: (i) extend the jurisdiction of the Inspector General ("IG") to all City Council committees and give that office the authority to audit these committees, 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 violation 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 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 deriving any income or other tangible benefit the representation of persons with interests adverse to the City in any judicial or quasi-judicial proceedings, or that impact anticipated City revenue or the health, safety or welfare of City residents in proceedings in which the City has the right to become a party; it is presumed that the City has the right to become a party in any tax, bankruptcy or environmental proceeding that could impact the City's revenue, or the health, safety or welfare of its residents' (vi) prohibit City employees and official 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.

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 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, 59 employees and officials attended classes here on May 21 and 30 and on June 11. There are 34 scheduled for June 20 and July 9.

All Board classes cover sexual harassment.

On May 21, at Mayor Lightfoot's first cabinet meeting, I made a 20 minute presentation to cabinet members, at the request of the Mayor.

On May 24, staff gave a 40 minute presentation to incoming laborers from the Department of Streets & Sanitation, at the request of the Department and Laborers' Local #1001.

On June 3, I gave a class for the new City Treasurer and three (3) of her top aides, at her request.

On June 4, I made a 45 minute presentation to "Chi Hack Night," which is a regular meeting of the local computer programmers and app builders. The presentation is posted on youtube here:

<https://www.youtube.com/watch?v=jbYse34ScmA>

On June 10, I made a 20 minutes presentation to all incoming Mayoral Fellows.

On June 17, I will present a 60 minute class to 8th Ward Alderman Sawyer and his staff.

On July 17, at the invitation of the Clerk of the City of Evanston, I will attend a panel discussion on a proposed lobbying ordinance that Evanston is considering.

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 2018-2019 lobbyist training program is being posted today. To date, 481 have completed it, which is about 64% of the total. The deadline is before July 2. We are sending out weekly notices to those who haven't completed the training.

For all employees and aldermen. We began drafting this training, but have delayed it, due to possible 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 will work closely with the current and next 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 are serving on the conference's program committee, and will be reaching out to 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.

On March 7 and 8, we had productive Program Committee meetings, and the program has largely been set. It will include two Chicago-centric breakout sessions. We are excited about it, and have secured the participation of several locally-based potential participants. On May 3 and 4, we had Steering Committee meetings.

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.

Sister Agency Ethics Officers

We will next meet 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.

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. As of this writing, all but 20 have filed. We will find that up to 58 are in violation of the Ordinance for failing to file. The fine period begins June 17, and 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 May 14, we have issued 319 informal advisory opinions. The leading categories were, in descending order: Travel; Statements of Financial Interests; Gifts; Post-employment; Employment of Relatives/Nepotism; Campaign Financing; and City Property.

The leading City departments from which requesters came in this period were (in descending order): City Council; Mayor’s Office (including the Lightfoot Transition Team); Chicago Police Department; Department of Law; Office of Inspector General; Department of Planning & Development; and Department of Aviation.

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, 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 the Mayor'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 is scheduled for today's meeting. The subject, a former employee, could be subject to a fine between \$1,001 and \$5,000.

In Case No. 18023.IG (corresponding to IG Case #17-0148), the IG presented its completed investigative report and corroborating evidence on June 20, 2018. The case involves a now-former employee who, the IG believed, violated the Ordinance by accepting gifts to a Cubs' post-season game from a business over which he had official authority, in excess of the Ordinance's \$50 per source/per year limit, failed to report the gift on his annual Statement of Financial Interests, and provided advice or assistance on matters concerning City business that were not wholly unrelated to his City job. The Board made a *prima facie* probable cause finding at its July 2018 meeting, and settled the matter with the former employee for a \$500 fine. At its January 2019 meeting, the Board found that there is probable cause to conclude that the gift-giver violated the Ordinance by giving the former employee a prohibited gift. A meeting with the business-owner gift-giver was held in May, and the Board is today announcing a settlement with him for the minimum fine, \$1,001. At the Board's May meeting, the Board voted 3-1 to impose this fine, with the dissenting Board member voting to assess no fine.

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 753 registered lobbyists. We have collected \$391,675 in lobbyist registration fees.

Second Quarter lobbying activity reports will be due July 20. On June 28, all lobbyists will be sent reminders of their deadline via email.

Freedom of Information Act

Since the last Boarding, the office has received three (3) requests under the Freedom of Information Act. The first request was for records related to City ordinances not within our control, and we so advised the requestor. The second request was for two (2) years of an alderman's Statements of Financial Interests, but for those years the forms were not filed with us (that is, they were pre-2013), and we so advised the requestor. The third request was for the categories of records this agency keeps, the method of accessing electronic records, the last three (3) FOIA requests filed with us, and a certification that records addressed were public records. This agency responded by providing relevant website links, .pdf copies of the prior three (3) FOIA requests, and a certification that the foregoing records were public records.