



BOARD OF ETHICS  
CITY OF CHICAGO

## A MONOGRAPH ON CHICAGO BOARD OF ETHICS ENFORCEMENT PROCEDURES

### **Introduction.**

Violations of the City's Governmental Ethics Ordinance are taken seriously. Ferreting out violations of the Ordinance and assessing appropriate penalties – consistent with the requirements of due process of law and appropriate confidentiality considerations until final determinations are made – is a pillar of any robust ethics program. The others are providing confidential advice to those who wish to comply with the Ordinance, educating City governmental personnel and others subject to the Ordinance about their responsibilities and obligations, and making disclosures filed by City governmental personnel and lobbyists available for public inspection.

The perception that ethics violations are ignored erodes confidence in City government. Further, some violations can cost the City in various ways. Examples of conduct governed by the Ordinance include City personnel who might be tempted to grant favored treatment or direct City contracts to their outside employers, or who accept prohibited gifts, or who hire their relatives over other qualified, talented candidates, or who leave their City positions and come back to lobby current City employees and officials, including their own former colleagues on behalf of private employers or clients, or who assist post-City employers or clients on City contracts they managed during their City service.

This guide summarizes how the Board's regulatory actions and enforcement procedures work. Chicago's ethics enforcement procedures stress due process and fairness, confidentiality prior to the Board's final determination or settlement of the matter, then public disclosure of violators and their violations, and, finally, if requested, judicial review by the Cook County Circuit Court.

While these procedures may appear cumbersome and overly legal or technical, we urge everyone to realize that an accusation of "unethical" conduct can be devastating to a person's reputation. Thus, the system is designed to balance the right of those subject to investigation or enforcement actions to a fair, impartial process through which they can contest the charges and evidence with the public's right to know whether and which of its governmental employees and officials have engaged in conflicts of interests or committed ethics violations. The system is designed so that evidence against the accused is maintained and meticulously analyzed — these are, after all, legal proceedings, governed by municipal ordinance, with rules, even though the subject matter, "ethics," is one that some may believe government personnel ought to know instinctively.

*Note: the enforcement procedures described in this monograph apply only to investigations conducted by the Office of the City Inspector General ("OIG") and to enforcement actions commenced by the Board itself where no factual investigation by the OIG is necessary. The Board of Ethics also has the authority to track, investigate, and impose appropriate penalties with respect to City personnel or lobbyists who do not timely complete required filings or training. These cases are handled internally by the Board. The names of all persons who*



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*violate these filing and training requirements are also made public. Violators are subject to fines of \$250 per day until they complete their requirements.*

## **Complaints and Investigations—What Happens to Your Complaint?**

Anyone may file an ethics complaint with the Board of Ethics or the OIG. However, the Board of Ethics has no authority to conduct factual investigations. If the Board of Ethics receives a complaint, the Board will analyze it and, unless the complaint needs no further factual investigation *and* states apparent ethics violations on its face, will refer it to the appropriate investigating authority for further action. This may include the OIG, or the inspectors general of “sister agencies” like the Chicago Public Schools or Chicago Park District.

Enforcement of the Governmental Ethics Ordinance and imposition of penalties for violations is the sole responsibility of the Board of Ethics. The Ordinance provides for penalties that range from \$250 to \$20,000 for various violations; some violations continue daily until they are cured, so fines can add up quickly.

The Board adjudicates completed investigations that the OIG has conducted in accordance with the OIG’s own enabling law and rules and regulations, which can be read here:

**Enabling Ordinance:** <https://igchicago.org/wp-content/uploads/2020/01/MCC-2-56-OIG-Ordinance-1-22-2020.pdf>

**Rules & Regulations:** <https://igchicago.org/wp-content/uploads/2014/03/OIG-Rules-and-Regulations.pdf>

## **Confidentiality.**

As provided in the Municipal Code of Chicago, for Board regulatory and enforcement actions or OIG investigations that were pending or were commenced on or after July 1, 2013, the Board will make public the names of persons investigated or whose matters have gone through the adjudicative process only *after* the matters are disposed of, either through settlement or a final determination after a merits hearing or meeting with the Board. For matters concluded prior to July 1, 2013, all names must remain confidential.

*The Board cannot confirm or deny whether it has received any particular complaint, or whether a matter is in the course of adjudication, except as permitted by law.*

## **What Does the Board Make Public?**

For a current summary of Board adjudicative matters since January 1, 2012, including the status of all investigations conducted by the OIG and former office Legislative Inspector General (“LIG”) prior to that office’s dissolution in November 2015, please see this page:

<http://www.cityofchicago.org/city/en/depts/ethics/provdrs/reg/svcs/ongoing-summary-of-enforcement-matters.html>



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For a current summary of all Board-initiated investigations (pre-July 2013) and Board-initiated enforcement actions since, with names mentioned as allowed by law, please see:

<https://www.cityofchicago.org/content/dam/city/depts/ethics/general/EnforcementMatters/Invest-Index.doc>

## **What happens after the OIG concludes an ethics investigation?**

### **I. Petitions for Probable Cause Findings.**

The purpose of an OIG ethics investigation is to discover and present the facts so as to enable the Board of Ethics to determine whether there is “**probable cause**” to believe that a person may have violated the Governmental Ethics Ordinance. Pursuant to the OIG’s enabling ordinance, the OIG may, after it concludes an investigation into potential violations of the Ethics Ordinance: (i) dismiss the matter; (ii) refer it to law enforcement if it believes that criminal activity occurred; or (iii) file a petition requesting a “**probable cause**” finding from the Board of Ethics. (See §2-56-050(b)(2) of the OIG’s enabling ordinance.) Investigations completed by the OIG in which it concludes there have been one or more violations of the Governmental Ethics Ordinance would be presented to the Board. Other OIG investigations are subject to the OIG’s own enabling ordinance and its Rules and Regulations.

*Note: pursuant to the enabling ordinance of the now-dissolved LIG, the LIG could investigate only signed and sworn complaints alleging misconduct against aldermen or City Council employees, and only upon a finding of “reasonable cause” or issuance of a letter of direction by the Board of Ethics. (The LIG presented 50 petitions to investigate to the Board of Ethics, and the Board granted 49 of these between December 2011 and November 16, 2015, when the four-year term of the Legislative Inspector General expired, and that office was dissolved.) After the LIG concluded an investigation, the LIG could: (i) dismiss the matter; (ii) refer it to law enforcement; or (iii) file a petition requesting a “probable cause” finding from the Board of Ethics.*

“**Probable cause**” here means a reasonable ground for the Board of Ethics to conclude that the evidence presented by the inspector general in a final investigative report could constitute a violation of the Ordinance.

“**Reasonable cause**” here meant a reasonable belief that the complaint on which the petition is brought was valid, and that, if the allegations in the complaint were true, the conduct described would constitute a violation of the Ordinance. Factors for the Board’s consideration in determining reasonable cause included but were not limited to: (i) the nature of the misconduct; (ii) the last date of the alleged misconduct; (iii) the credibility of the complaint; (iv) the reliability and accuracy of the content of the petition and the complaint therein; (v) whether, assuming the facts in the complaint and petition were true, it would be reasonable to conclude that the alleged misconduct constituted a violation of the Ordinance; (vi) whether the complaint alleged a facially reliable basis of knowledge of the alleged misconduct; and (vii) whether the facts alleged in the petition fell within the jurisdiction of the LIG and the Board.

When the Board receives a petition to find probable cause from the OIG, that petition includes the completed investigative report and the evidence supporting the OIG’s findings and recommendations, and an index of that evidence. The Board reviews and analyzes the report and evidence and determines whether they warrant a



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finding of probable cause; the Board will dismiss the matter if its analysis shows that the evidence does not warrant that finding. In that event, the Board will make a summary comment about the matter without mentioning the name(s) of the persons involved in the matter.

***The OIG's enabling ordinance provides that the name(s) of the complainant(s) shall be included. The Board will keep this information confidential unless otherwise required by law.***

→ ***If the Board finds no probable cause***, it notifies the subject and the OIG of its finding and the reasons for the finding. As stated above, the name(s) of the person(s) investigated remains confidential.

→ ***If the Board does find probable cause***, the subject of the investigation is provided with all the evidence the Board has received from the OIG supporting this finding, and the final investigative report the OIG presented to the Board in support of its probable cause petition.

## ***II. Meeting, Settlement, Dismissal, Discipline, or Merits Hearing and Final Board Opinion.***

**Subject Meeting.** The subject then has the right to meet with the Board with an attorney or other representative, and/or present materials and arguments in support of their position. This meeting is confidential and not open to the public. Representatives from the OIG are not in attendance at this meeting (it is *ex parte*). No oaths are administered by the Board at the meeting. The meeting is recorded and made part of the case record. It is called a “§2-156-385 meeting” after the section in the Governmental Ethics Ordinance that provides for it.

After this meeting, the Board will re-consider the case in light of any additional information or material presented by the subject. The Board will then:

- seek to settle the matter by fine and/or discipline\*, or in another appropriate manner (all settlements are in writing and become public, at this link:  
<https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/SettlementAgreements.html>); or
- pursue an action for fine or discipline\* (elected officials are not subject to discipline, but only to fines); or
- take no action if the subject overcomes the Board’s probable cause finding, thereby effectively dismissing the matter.

*\*Note: the Board of Ethics has no authority to impose discipline. Instead, the subject and the subject’s department head (or alderman or City Committee Chair, for City Council employees) and the Board would enter into a “three-way settlement,” in which the Department Head or City Council member imposes the discipline.*

**Discipline.** Should the Board decide to pursue an action for discipline, then, within 40 days of its decision, it submits its written recommendation, together with all the evidence supporting the Board’s recommendation, to either:



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--the Mayor, if the subject is a Department Head or Appointed Official; or

--the Chair of the City Council Committee or City Council member for whom the subject works if the subject is a City Council employee; or

--the Department Head, for any other City employee.

The recipient of the Board's recommendation then shall, within 30 days of receiving it, report back to the Board in writing on what action was taken, or provide a written explanation of why he or she declined to take the recommended action.

**Fines; Ethics Trials.** The subject has the right to contest the matter if they do not overcome the Board's probable cause finding and the matter cannot be settled, or the Board decides to pursue a fine rather than discipline, or the subject just wishes to "have their day in court." The matter will then proceed to an administrative hearing (also called a "merits hearing" or an "ethics trial"), presided over by an administrative hearing officer or judge retained by the City's Department of Administrative Hearings. This hearing shall be held in a closed session, no less than 60 days (approximately 2 months) after the decision to proceed to a merits hearing.

**Hearing Officer and Prosecutor Appointed.** About one week after a decision is made to proceed to a merits hearing, the Director of the City's Department of Administrative Hearings will appoint a hearing officer for the matter. Within a few days after that appointment, the Board's Executive Director will send the entire case record, including the recording of the §2-156-385 meeting and all evidence or materials presented by the OIG and/or subject, and the final investigative report, to the subject (or the subject's attorney), and to the prosecutor. The prosecutor could be an attorney from the City's Law Department, or an attorney hired and appointed by the Law Department for this specific purpose.

**Statement of Charges.** The prosecutor then will, within 30 days of receiving the record, prepare a statement of charges, which is served on the subject (or his or her representative). Along with this statement of charges, the prosecutor will include: (i) a list of witnesses he or she intends to call at the hearing; (ii) a copy of all documents he or she intends to introduce at the hearing; (iii) any potentially exculpatory material in the City's possession from the OIG's investigation; and (iv) a notice stating the time and date for the hearing. The prosecutor may request a one-time automatic 30 day extension to serve these materials. Any requests for additional extensions are within the discretion of the hearing officer, and only for good cause. *Note: the prosecutor may, in their sole discretion, decide not to file charges if, in their judgment, the evidence does not support the charges.*

**Response to Charges.** Within 21 days of receiving the charges, the subject may file a written response to them. The subject is entitled to a one-time automatic extension of 30 days to file the response; additional extensions are granted at the discretion of the hearing officer, for good cause. At least 10 days before the hearing, the subject shall provide the prosecutor a list of all witnesses they intend to call at the hearing, and a copy of all documents they intend to introduce at the hearing.



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Any non-dispositive pre-hearing motions or other matters are handled by the attorneys and the administrative hearing officer. The Board of Ethics, however, retains subpoena authority with respect to the appearance and testimony of witnesses and/or documentary evidence.

**Hearing.** The administrative hearing officer presides over the case. By law, the hearing is held behind closed doors, and is not open to the public. It is held in accordance with the Rules of the Department of Administrative Hearings. *See this page:* <http://www.cityofchicago.org/city/en/depts/ah.html>

The hearing is recorded or transcribed by a court reporter. The hearing officer may receive written submissions, testimony, arguments and documents. All testifying parties and witnesses shall be administered an oath by the hearing officer, and instructed by the hearing officer as to the confidentiality of the proceedings.

**Burden and Standard of Proof.** The City (prosecutor) bears the burden of proof in the case, and proceeds first. No violation of the Ordinance can be established except upon proof by a preponderance of the evidence.

**Hearing Officer's Recommendation; Board's Final Opinion.** Within 40 days after the end of the hearing, the hearing officer will issue a confidential final report and recommendation to the Board. The Board will review the hearing officer's report and recommendation and issue its final opinion and determination as to whether a violation did or did not occur and assess fines accordingly. Per §2-156-465 of the Ordinance, fines for various types of violations range from \$200 per violation up to \$20,000 or more, in certain circumstances. Note: The amount of the maximum fine per violation depends on when the violation occurred. If it occurred prior to September 29, 2019, it is \$2,000 per violation; if it occurred September 29, 2019 through September 30, 2022, it is \$5,000 per violation; if it occurred on or after October 1, 2022, it is \$20,000 per violation.

**The Board's final opinion becomes public, and includes the names of all violators, and all penalties imposed.** However, if the Board determines that no violation occurred, the subject's name is omitted unless the subject requests that their name be mentioned in the Board's final opinion.

### **III. Appeals.**

Any person found by the Board to have violated the Ordinance and against whom the Board has assessed a fine may, within 14 days of when the Board issues its opinion, ask the Board to reconsider its opinion, on the basis of newly discovered evidence or an intervening change in the law. The Board's final opinion can be appealed to the Cook County Circuit Court.

### **What happens if the Board itself finds probable cause in cases where no OIG factual investigation is needed?**

**Probable Cause Finding.** As stated above, the purpose of an OIG ethics investigation is to discover and present the facts to enable the Board of Ethics to determine whether there is “probable cause” to believe that a person may have violated the Governmental Ethics Ordinance. However, there may be situations in which evidence appears in the media, or is forwarded to or in the possession of the Board, that, on its face, *without additional*



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*factual investigation*, warrants a Board finding that there is probable cause to conclude that a person may have violated the Ordinance. In such cases, the Board will make a probable cause finding.

**Subject Meeting.** As of October 1, 2022, the Board must give the subject of any Board-initiated probable cause finding at least 10 City business days' written notice (via certified and first class mail, and email, if available) to respond to evidence in the Board's possession before the Board can make a probable cause finding. If that period expires before the subject responds, or if the subject fails to refute the possible violation, then the Board may make this finding—but the subject's identity remains confidential. (See §2-156-390.) Once the Board makes this finding it informs the subject and provides the evidence on which the finding is based. The subject may then meet with the Board, together with an attorney or other representative, and present materials and arguments to rebut the Board's finding. The finding and the meeting are confidential. The subject may decide to forego this opportunity and enter into a public settlement agreement with the Board, paying whatever fine the subject and Board agree to.

**Final Determination.** If no settlement is offered, the full Board will consider the additional materials or arguments and determine whether the subject has successfully rebutted the probable cause finding. If the Board determines, by majority vote, that the subject has successfully rebutted its finding, the matter is dismissed. It remains confidential, though the Board will make summary public comment about the matter without revealing the subject's identity. If the Board determines, by majority vote, that subject was unsuccessful in rebutting the Board's probable cause finding, the Board may still attempt to enter into a settlement agreement with the subject, or may make a final determination that the subject violated the Ordinance and impose appropriate fines. Any settlement agreement or final Board determination becomes public.

**Appeal Rights.** As with OIG investigations and merits hearings, any person found by the Board to have violated the Ordinance and against whom the Board has assessed a fine may, within 14 days of when the Board issues its final determination, ask the Board to reconsider its opinion, on the basis of newly discovered evidence or an intervening change in the law.

The Board's final opinion imposing a fine can then be appealed to the Cook County Circuit Court. Note: the Board has opted out of the Illinois Administrative Review Law; appeals would be handled via a petition for Certiorari to the Cook County Circuit Court.

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