



BOARD OF ETHICS
CITY OF CHICAGO
MEMORANDUM

To: Mayor's Office of Legislative Counsel and Government Affairs

From: Stephen W. Beard, Chair, Board of Ethics
Russell Carlson, Member
Mary T. Carr, Member
Frances R. Grossman, Member
Daisy S. Lezama, Member

Steven I. Berlin, Executive Director, Board of Ethics

Re: Referred Matter Response: Smith, Pawar/amendment to chapter 2-55, Legislative Inspector General

Date: 30 November 2015

I. **Summary of proposal:** This proposal, submitted to the City Council on November 18, 2015, would amend the enabling ordinance of the Office of Legislative Inspector General ("LIG"), which is chapter 2-55 of the City's Municipal Code. More specifically, it would, among other things:

- 1) leave with the LIG (and not transfer to the Office of Inspector General, or "IG") the authority to receive and investigate complaints of alleged misconduct and Governmental Ethics Ordinance violations by City Council members and employees;
- 2) guarantee the LIG's annual budget at a minimum of \$500,000;
- 3) authorize the LIG to initiate its own investigations without approval from the Board of Ethics, and without signed and sworn complaints, including initiating investigations of potential violations of the campaign contribution limitations in the Governmental Ethics Ordinance; and
- 4) authorize the LIG to issue, to the City Council's Committee on Committees, Rules and Ethics, "advisories" related to management problems.

II. **Department position:** The Board of Ethics has long maintained that a professional, well-funded, accountable agency with authority to investigate complaints of misconduct and/or Governmental Ethics Ordinance violations by all City employees and officials, including City Council members and their staff, is, together with confidential advice, regular

ethics education and regulation, a foundational pillar of ethics in Chicago government (as in other jurisdictions).¹

The Board of Ethics remains less interested in whether there are one or two inspectors general, and more interested in ensuring that:

1) all meritorious ethics complaints (including those alleging misconduct by City Council personnel) are identified, then

2) those complaints are subject to a professional, fair, thorough investigative process, and then either:

(i) turned over to a law enforcement agency, if the investigation indicates criminal activity; or

(ii) if the investigation indicates violations of the Governmental Ethics Ordinance, presented to the Board of Ethics for a finding of probable cause, so that, if warranted, the Board can settle the matter or send it to a merits hearing, and then issue a final public determination as to whether the Governmental Ethics Ordinance was actually violated, and assess appropriate sanctions as provided by law. That is, the purpose of investigations into the Governmental Ethics Ordinance is to determine whether there is probable cause to conclude that a violation of the Ordinance has occurred.

Based on our experience with both the LIG and the IG over the past four years, and as explained below, we strongly support the position—reflected in this proposal—that the law should not require that the agency charged with investigating alleged misconduct by City Council members and staff seek and receive approval from the Board of Ethics prior to commencing an investigation, nor should it require sworn complaints. Due to far-reaching procedural changes made to the Governmental Ethics Ordinance in July 2013, as a result of the Mayor's Ethics Reform Task Force's report and recommendations, we believe that these requirements are unnecessary.²

As of November 30, 2015, this Board has operated for 29 months under the July 2013 procedures. These procedures require both the LIG and the IG to submit to the Board of

¹ Our position continues to be consistent with the Sullivan Report (formally titled "Proposals for Reform, Report of Special Assistant Corporation Counsel Thomas P. Sullivan," March 16, 1987), which is one wise document. It serves as a kind of foundational text for our agency, and covers a myriad of topics, including our relationships with the investigator(s). Mayor Harold Washington commissioned the Report in early 1987, not long after the passage of the first version of the Governmental Ethics Ordinance. Recommendation 26 states:

"At present, OMI [the Office of Municipal Investigations, the predecessor to the IG] has no jurisdiction to investigate elected City officials ... of the staff of the City Council, and the Board of Ethics may not investigate aldermen. We believe these exemptions from the investigatory jurisdiction of OMI and the Board of Ethics should be eliminated." [citations omitted]

See also our earlier Memorandum on the topic of City Council investigations, dated March 2, 2010: <http://www.cityofchicago.org/content/dam/city/depts/ethics/general/InspectorGeneralMemo/Memorandum-1.pdf>

² We note that the requirement that the LIG seek approval from the Board of Ethics prior to commencing an investigation was enacted in May 2010 as part of the LIG's enabling ordinance, fully three (3) years *prior* to the changes made as a result of the Task Force's recommendations.

Ethics final investigative reports and supporting evidence in which they have concluded that the Governmental Ethics Ordinance was violated. The Board then meticulously examines the reports and evidence in order to determine whether there are grounds to find probable cause, and if so, whether to pursue settlement (settlements are made public) or formal adjudication (the results of which, by law, shall also be made public).³

During this 29 month period, we have received 50 petitions from the LIG to commence investigations (of which we approved 49) and 22 final investigative reports, and two (2) final investigative reports submitted by the IG.⁴

Our experience leads us to support this proposal, but with the following strong caveats and recommendations:

1) We recommend that the Office of the LIG be made into a full-fledged, accountable City department, with the LIG and his or her staff hired as full-time City employees, *not* independent contractors.

2) We note that the proposal could allow a non-attorney to become the LIG: in it, the **minimum** qualifications for the position of LIG include holding a bachelor's degree and five (5) years of experience as an inspector general or federal law enforcement officer, etc. Thus, we recommend that Chapter 2-55 be amended to enable the LIG to hire such staff as he or she deems appropriate to effect the purposes of the chapter, provided, however, that the LIG **must** hire a legal counsel or staff attorney, in order that a legal analysis of any complaints or matters can be conducted prior to the commencement of any investigation;

3) We recommend that the proposal be amended so that the identity of the complainant should not be confidential automatically in all cases, contrary to what is provided in proposed §2-55-070. Instead, we recommend that this proposal conform to §2-56-070(e) of the IG's enabling ordinance, which provides for the name of the complainant to be revealed to the Board of Ethics as part of the final investigative report. As does the IG, the LIG should present this information with its probable cause petition, regardless whether the complainant is the LIG or a member of the LIG's staff (in the case of an anonymous complaint, or a complaint and investigation self-initiated by the LIG), or another person. By law, the Board must keep this information confidential. However, in matters in which complaints are based on the complainant's personal experience or personal witness, knowledge of the complainant's identity might be required in order to afford the subject due process of law.

4) We recommend that an anti-retaliation provision be added to protect persons who complain to and cooperate with the LIG (whether as complainants or witnesses). This would

³ For more information on these procedures, please refer to our monograph explaining the ethics enforcement process: <http://www.cityofchicago.org/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

⁴ See our "Ongoing Summary of Enforcement Matters," <http://www.cityofchicago.org/city/en/depts/ethics/provdrs/reg/svcs/ongoing-summary-of-enforcement-matters.html>. Please note that, as required by law, this Summary does not and cannot disclose the names of those persons investigated until there has been a settlement reached, or a final determination following a merits hearing.

be analogous to §2-56-100 in the IG's enabling ordinance, entitled "Retaliation Prohibited," which states:

"No person shall retaliate against, punish or penalize any other person for complaining to, cooperating with or assisting the inspector general in the performance of his office."

5) We note that current §2-55-070(d), the "false statements" provision, would be eliminated in this proposal, because the requirement that complaints be signed and sworn or certified is also being eliminated. Currently, §2-55-070(d) provides that:

"Any person who intentionally makes a false statement, material to the investigation, in any complaint alleging misconduct against an alderman or city council employee, which is certified by such person in accordance with this section, shall be guilty of knowingly furnishing false statements or misleading information and shall be subject to the penalties listed in Section 2-55-140."

However, we recommend that a "perjury" or false statements provision should be left in the law governing investigations of City Council members and staff. This would be fairer, would aid in ensuring that LIG investigations are of the highest quality, would parallel the provision in the IG's enabling ordinance, §2-56-145, and would stand a better chance of passage.

6) Alternatively, we recommend that persons who testify before **either** the IG or LIG should become subject to the City's "false statements" ordinance, cited below (which may require an amendment to that ordinance, as indicated in **red**).

7) We recommend that, consistent with #6, above, §2-156-385(3) of the Governmental Ethics Ordinance, which provides for *ex parte* meetings with the Board of Ethics **after** the Board makes a preliminary determination of probable cause based on a concluded IG or LIG investigation, should be amended so that investigative subjects and other witnesses become subject to this false statements ordinance as well, but not dependent upon administration of an oath by the Board.

1-21-010 False statements.

(a) Any person who knowingly makes a false statement of material fact to the city in violation of any statute, ordinance or regulation, or who knowingly makes a false statement of material fact to the city in connection with any application, report, affidavit, oath, **investigation conducted under chapter 2-55 or 2-56 of the Municipal Code, or meeting or conducted after such as investigation as provided in chapter 2-156 of the Municipal Code,** or attestation, including a statement of material fact made in connection with a bid, proposal, contract or economic disclosure statement or affidavit, is liable to the city for a civil penalty of not less than \$500.00 and not more than \$1,000.00, plus up to three times the amount of damages which the city sustains because of the person's violation of this section. A person who violates this section shall also be liable for the city's litigation and collection costs and attorney's fees. The penalties imposed by this section shall be in addition to any other penalty

provided for in the municipal code.

(b) Any person who signs, certifies, attests, submits or otherwise provides assurances to the city, or causes any other person to sign, certify, attest, submit or otherwise provide assurances to the city, that a statement of material fact made in connection with any application, report, affidavit, oath, attestation or other document submitted to the city is accurate, true or complete, shall make a reasonable investigation to determine the accuracy, truthfulness or completeness of such statement of material fact.

(c) When any person signs, certifies, attests, submits or otherwise provides assurances to the city, or causes any other person to sign, certify, attest, submit or otherwise provide assurances to the city, that a statement of material fact made in connection with any application, report, affidavit, oath, attestation or other document submitted to the city is accurate, true or complete, and that statement of material fact is not accurate, true or complete, a rebuttable presumption shall be created that such person has not made a reasonable investigation to determine the accuracy, truthfulness or completeness of such statement of material fact.

(d) For the purposes of Chapter 1-21 of this Code, a person knowingly makes a false statement of material fact when that person (i) makes a statement of material fact with actual knowledge that the statement was false, or (ii) makes a statement of material fact with knowledge of facts or information that would cause a reasonable person to be aware that the statement was false when it was made, or (iii) signs, certifies, attests, submits or otherwise provides assurances, or causes any other person to sign, certify, attest, submit or otherwise provide assurances, that a statement of material fact is true or accurate in deliberate ignorance or reckless disregard of the truth or falsity of the statement. For purposes of this section, a person who fails to make a reasonable investigation to determine the accuracy, truthfulness or completeness of any material fact acts in deliberate ignorance or reckless disregard of the truth or falsity of the material fact.

8) We recommend that, given the far-reaching and unprecedented procedural protections afforded to the persons investigated under the changes to the Municipal Code made in July 2013 (upon the recommendations of the Mayor's Ethics Reform Task Force)⁵, the office with authority to investigate City Council members and staff should be able both to self-initiate investigations, and to investigate anonymous complaints, subject to # 9, below.

9) However, we also submit that best practice in this area is to require that all investigations be commenced based upon a written complaint, even where the complainant is the LIG, the IG, or a member of their staff. Accordingly, we recommend that, should either inspector general decide to commence a Governmental Ethics Ordinance investigation based on an anonymous complaint, or determine to self-initiate an investigation, a written complaint

⁵ These include review by the Board of Ethics of the final investigative report and supporting evidence, and an opportunity for the subject to "tell his [her] side of the story" to the Board (without a representative of the investigator present, that is, *ex parte*) in order for the Board to determine probable cause, and then move the matter to a settlement (which is public), or, if necessary, a full evidentiary hearing (after which the Board's final determination is made public).

should be drafted, dated, and signed by the IG/LIG (or a staff member from these offices), and witnessed by two other staff members, including, where appropriate, the IG or LIG him- or herself, and a copy of that complaint (or, if received telephonically, a written record of when that complaint was received and what it alleged) included in the investigative summary submitted to the Board of Ethics. This would help ensure accountability on the part of the investigator, and strengthen the entire system of ethics oversight and enforcement. The success of the inspector(s) general—as well as that of the legal staff and members of the Board of Ethics—depends on the integrity, discretion, professionalism, and legal judgment of the individuals holding these offices. A person granted the authority to self-initiate investigations wields power, regardless whether the investigation ends in a dismissal, or a referral to a department head or City Council committee, or a referral to the Board of Ethics with a petition for a probable cause finding, or a criminal referral to the United States Attorney, Cook County State’s Attorney, or State Attorney General.

10) We recommend that the drafters consider whether the two-year statute of limitations in §2-55-080(i) should be tolled until a new LIG is installed (or the responsibility to investigate City Council members and staff is transferred to the IG). Under current law, the LIG (and the IG, as well) must complete any investigation into violations of the Governmental Ethics Ordinance within two (2) years of commencing it (unless there is evidence that the subject has concealed evidence in order to delay the investigation). This is particularly apt in light of the Board’s referrals to each inspector general of potential campaign contribution violations; these referrals were made in December 2014 and October 2015.⁶ To date the Board has received no completed campaign finance investigative reports from either inspector general.

III. Reasons for position:

Overall impact on the City: As stated above, the Board of Ethics believes that a competent, professional, well-funded, accountable agency that can investigate complaints of misconduct and/or Governmental Ethics Ordinance violations against City Council personnel is important to this City. The Board is less interested in whether there is a separate LIG office for this purpose, and more interested in professionally, thoroughly and competently conducted investigations of meritorious complaints.

Policy Issues: See above. The Board of Ethics is aware that City Council members hold varying views on this proposal, as well as on the other proposal that is in the Committee on Workforce Development, which would transfer the authority to investigate City Council members and staff from the LIG to the IG. As stated above, the Board takes no position on *that* issue; rather, our caveats and recommendations above apply to *either* proposal, as well as to any other option. But, we do believe that making changes to the current legal and procedural structure governing investigations of City Council members and their staff is in the City’s best interests.

⁶ See <http://www.cityofchicago.org/content/dam/city/depts/ethics/general/memos/CFRPressreleasOct222015.pdf> and http://www.cityofchicago.org/content/dam/city/depts/ethics/general/Press_Release_FINAL.pdf

Our suggestions would bring Chicago in line with the processes and procedures of two close cohort agencies, the New York City Conflicts of Interests Board:

http://www.nyc.gov/html/conflicts/downloads/pdf2/mono/mono_enf.pdf

and the Philadelphia Board of Ethics:

http://www.phila.gov/ethicsboard/PDF/Regulation%20No.2%20with%20Supplement_Final.pdf

Financial impact: The Board of Ethics does not anticipate that enactment of this proposal would have any impact on its budget.

Operation impact: The Board of Ethics does not anticipate that enactment of this proposal would have any impact on its operations.

IV. Please include any other pertinent information about the ordinance or resolution you believe will be helpful in crafting a position by the administration. See above.