



BOARD OF ETHICS
CITY OF CHICAGO

OPENING STATEMENT
March 12, 2019

Good morning, Honorable Members of the Committee on Committees, Rules and Ethics. It is my privilege to address you with respect to this package of ethics-related reforms. I have been with the Board of Ethics since September 1993, and have seen many changes to the City's Governmental Ethics Ordinance. I'd venture to say that the Ordinance is, next to the zoning, building and liquor licensing provisions, amended more frequently than any other part of the City's Municipal Code. While some may believe that getting ethics or "conflicts of interests" rules correct is simple, I know from long experience counselling many of you over the years that it is anything but. We all know it's a nuanced business, a continuing process. I myself have seen meaningful changes since I began my City career, and am grateful to be a part of this process.

The package before you represents a distillation of more than a dozen proposals submitted by and to City Council in January. In some parts, it is aggressive; in others, it adopts a more gradual approach – *Festina lente*, "make haste slowly." We all understand that, no matter what is proposed – and what might be proposed – much is subject to disagreement, some of that disagreement vehement. In this spirit, I suggest that Council members consider the portions of the proposal with which they strongly disagree now for serious consideration in the future. All are made in good faith, with the recognition that the City Council is, more than any other City agency, an autonomous body that makes its own internal rules, in addition to the ordinances it enacts.

This proposal addresses specifically the following:

1. Should the position of alderman be "full-time?" Should aldermen be prohibited from having outside jobs? This is an issue on which the Board of Ethics and Mayor have, wisely in my view, remained agnostic. That's reflected in this proposal. Why?

i) such a fundamental change must come from City Council itself, as our Board recognized in an opinion last Summer [see https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_ElectOfficials/18007.A.pdf] and as this Mayor, and Mayors before him, have also recognized; and

ii) even such a ban would *not* remove *all* potential conflicts of interests, because aldermen could still have outside investments (one cannot and should not prohibit *that*), and it would not address when aldermen should recuse because of *non-monetary* relationships with persons that have matters pending before Council, like their relatives, friends, or former business partners (*those* disclosures are *already* covered by the majority of Rule 14 filings, and reflect when City Council members go *above and beyond what the law requires*); and

iii) nearly every American legislature other than Congress is part-time. Hence, the goal is not to eliminate all potential conflicts of interest, for that is impossible in a complex city and society that demands much of its local elected officials, but rather to have a legislature whose members recognize potential conflicts of interest and then treat them responsibly and professionally. This proposal aims to do just that.

2. But there is a narrower, complex, and controversial question this proposal *does* address directly: should aldermen and other City officials and employees be *prohibited* from representing (or having a monetary interest in the representation of) clients in judicial or administrative proceedings not only where the City is an adverse party (that's current law), but also where the City has the *right to intervene* even if it chooses not to? Such a targeted ban would eliminate the possibility that aldermen (and other City officials and employees) could represent clients in, for example: i) environmental cases in which the City is known to have been involved through negotiation; ii) bankruptcy proceedings where the City could intervene as a lienor; or iii) real estate tax abatement proceedings for property located in Cook County.

As a legal matter, were this reform proposal enacted, it would be in line with governing law, that is, the Illinois Supreme Court's 1990 landmark *In re Vrdolyak* decision. It is a far-reaching reform, though one that seems necessary. Were this proposal to be rejected, then, under current law, as announced by that Court, the test would remain subjective: elected officials with private professional practices may decide for themselves. They "must avoid not only direct conflicts of interests, but also any situations which might appear to involve a conflict of interest," and, if a governmental unit other than the City is an adverse party, they "must carefully examine the circumstances to determine whether a conflict of interests exists—if so, they should decline employment in that case." See <https://law.justia.com/cases/illinois/supreme-court/1990/68665-7.html>

The proposal before you on this issue is controversial and aggressive; we have heard vehement, well-reasoned objections to it. Should it not be enacted at this time, I still advise you to keep this question at the forefront of potential reforms, because it addresses head-on one of the most trenchant public criticisms of the City Council.

3. Importantly, this proposal also tightens required "conflicts of interest" disclosures, and provides a "three strikes and you're out" approach to recusals for City Committee Chairs.

The approach of the Governmental Ethics Ordinance has *always* been, since the days of Harold Washington and this law's first version: we're not going to prohibit you from having outside law practices or other kinds of income-producing jobs, but we *are* going to heavily regulate this so that all you City employees and officials keep your outside business interests as separate as possible from your City responsibilities. And, if you choose to drive in the fast lane of the Autobahn — which is your choice — you're going to be subject to a myriad of technical recusal and disclosure rules. And, because you're driving at 120 mph, any mistake you make is going to be fatal.

So this proposal makes clear that one cannot effectively recuse oneself if one is chairing a meeting in "the [committee] room where it happens." If Council members accept the Chair of a Council Committee, it will be incumbent on them to go through a "conflicts check" when the meeting agenda is set, and enable other members of the committee and the public to see in advance what they will recuse from, and why, and to enable the vice chair or another person to preside over the meeting. And, if there is a need for more than three (3) distinct potential conflicts in a twelve-month period, it will be time to relinquish either the Chairmanship or the private client.

4. As to those proposals affecting the zoning process, the goal is transparency. If a hearing on a matter is not held within 6 months, there are 3 remaining months for the committee to report the matter out of committee, otherwise, the matter is deemed denied by the City – unless these delays are at the applicant's behest.

I look forward to your questions.

Steven I. Berlin, Executive Director

SUBSTITUTE
ORDINANCE

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1. Chapter 2-156 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and by inserting the language underscored, as follows:

2-156-030 Improper influence.

(a) No official or employee shall make, participate in making or in any way attempt to use his position to influence any city governmental decision or action in which he knows or has reason to know that he has any financial interest distinguishable from its effect on the public generally, or from which he has derived any income or compensation during the preceding twelve months or from which he reasonably expects to derive any income or compensation in the following twelve months.

(b) No elected official, or any person acting at the direction of such official, shall contact either orally or in writing any other city official or employee with respect to any matter involving any person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months. In addition, no elected official may preside over or participate in any discussion in any €City €Council €Committee hearing, or participate in any discussion in any €City €Council meeting or vote on any matter involving the person with whom the elected official has any business relationship that creates a financial interest on the part of the official, or the domestic partner or spouse of the official, or from whom or which he has derived any income or compensation during the preceding twelve months or from whom or which he reasonably expects to derive any income or compensation in the following twelve months.

2-156-080 Conflicts of interest; appearance of impropriety.

(Omitted text is not affected by this ordinance)

(b) (1) With regard to any matter pending before the €City €Council or any City €Council €Committee, any member of the €City €Council who has any financial interest that is either (1) distinguishable from that of the general public or all aldermen, or (2) from which ~~he or she~~ the member has derived any income or compensation during the preceding twelve months or from which ~~he or she~~ the member reasonably expects to derive any income or compensation in the following twelve months shall publicly disclose in detail the nature and extent of such interest, including when such interest commenced, on the records of proceedings of the €City €Council and City Council Committee, and shall also notify, with the same detail, the €Board of

eEthics of such interest within 96 hours of delivery by the eClerk to the member, of the introduction of any ordinance, resolution, order or other matter in the eCity eCouncil, or as soon thereafter as the member is or should be aware of such potential conflict of interest. If a disclosing member believes that disclosure of any required detail is prohibited by applicable privacy law or a confidentiality requirement, that member shall include a statement of the pertinent basis for non-disclosure, and otherwise disclose fully. The Board of Ethics shall review any disclosure made under this subsection and shall determine whether the member has provided sufficient detail regarding the conflict of interest, and may request more detail if it deems that is necessary. The Board of Ethics shall give the member one opportunity to correct the defect in the disclosure within seven days from the date of such request. The ~~h~~Board of eEthics shall ~~make available for public inspection and copying~~ post such disclosures, including any additional detail submitted by the member, on the Board of Ethics website, in a searchable format, immediately upon receipt. ~~He or she~~ The member shall abstain from participating in any discussion concerning and voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the eCity eCouncil is or should be aware of such potential conflict.

(2) To avoid even an appearance of impropriety, any member of the eCity eCouncil who has any business relationship with a person or entity with a matter pending before the eCity eCouncil or any City eCouncil eCommittee: (4j) that creates a financial interest on the part of such member, or the domestic partner or spouse of such member, or (2ii) from whom or which ~~he or she~~ the member has derived any income or compensation during the preceding twelve months or from whom or which ~~he or she~~ the member reasonably expects to derive any income or compensation in the following twelve months, shall publicly disclose in detail the nature of such business relationship or income or compensation, including when such relationship commenced, on the records of proceedings of the eCity eCouncil and the City Council Committee, and shall also notify, with the same detail, the ~~h~~Board of eEthics of such relationship within 96 hours of delivery by the eClerk to the member, of the introduction of any ordinance, resolution, order or other matter in the eCity eCouncil, or as soon thereafter as the member is or should be aware of such potential conflict of interest. If a disclosing member believes that disclosure of any required detail is prohibited by applicable privacy law or a confidentiality requirement, that member shall include a statement of the pertinent basis for non-disclosure, and otherwise disclose fully. The Board of Ethics shall review any disclosure made under this subsection and shall determine whether the member has provided sufficient detail regarding the business relationship, and may request more detail if it deems that is necessary. The Board of Ethics shall give the member one opportunity to correct the defect in the disclosure within seven days from the date of such request. The ~~h~~Board of eEthics shall ~~make~~ post such disclosures, including any additional detail submitted by the member, on the Board of Ethics website, in a searchable format, ~~available for public inspection and copying~~ immediately upon receipt. ~~He~~ The member shall abstain from participating in any discussion concerning and voting on the matter but shall be counted present for purposes of a quorum. The obligation to report a potential conflict of interest under this subsection arises as soon as the member of the eCity eCouncil is or should be aware of such potential conflict. For purposes of this subsection

(2) only: "matter pending before the eCity eCouncil or any City eCouncil eCommittee" shall refer to City eCouncil action involving the award of loan funds, grant funds or bond proceeds, bond inducement ordinances, leases, land sales, zoning matters, the creation of tax increment financing districts, concession agreements or the establishment of a Class 6(b) Cook County property tax classification.

(3) Any Chairman of a City Council Committee who makes, pursuant to subsection (b)(1) or (b)(2) of this section, more than three conflict of interest disclosures within a 12-month period pertaining to distinct matters before or reported by that Committee, shall eliminate the conflict of interest or terminate the business relationship that caused such member to make such disclosures, or resign from serving as the Chairman of the Committee.

(4) Any member who fails to provide additional details regarding a disclosed conflict of interest or business relationship if requested by the Board of Ethics, or who otherwise violates this subsection, in addition to any other applicable penalty, shall be subject to a fine of not less than \$500.00 and not more than \$2,000.00 for each offense. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply.

(Omitted text is not affected by this ordinance)

2-156-090 Representation of other persons.

(a) No elected official or employee may represent, or derive any income or compensation from the representation of any person other than the city in any formal or informal proceeding or transaction before any city agency in which the agency's action or non-action is of a nonministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any city agency on behalf of his constituents in the course of his duties as an elected official.

(b) No elected official or employee may derive any income or compensation from the representation of any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the eCity is a party or has the right to become a party and that person's interest is adverse to that of the eCity. For purposes of this subsection, the City is presumed to have the right to become a party in any tax abatement, bankruptcy or environmental protection proceeding that impacts anticipated revenue, or the health, safety or welfare of its residents.

(c) No appointed official may represent any person in the circumstances described in subsection (a) or (b) unless the matter is wholly unrelated to the official's city duties and responsibilities.

2-156-160 Content of statements.

(a) Statements of financial interests shall contain the following information:

(1) The name, address and type of any professional, business or other organization (other than the city) in which the reporting individual was an officer, director, associate, partner, proprietor or employee, or served in any advisory capacity, and from which any income in excess of \$1,000.00 was derived during the preceding calendar year, and the category of such income as specified in subsection (b);

(Omitted text is not affected by this ordinance)

(6) The name of any covered relative of the reporting individual who is registered as a lobbyist with the ~~board~~ Board of Ethics or who is an employee or full or part-owner of a city contractor;

(Omitted text is not affected by this ordinance)

(c) If a reporting individual adds a new reportable financial interest since the individual's last filing, that individual must file a supplement to the individual's current statement of financial interests on file with the Board of Ethics within 30 days of such occurrence, in a manner prescribed by the Board of Ethics.

2-156-445 Limitation of contributing to candidates and elected officials.

(a) No person who has done business with the city, or with the Chicago Transit Authority, Chicago Board of Education, Chicago Park District, Chicago City Colleges, or Metropolitan Pier and Exposition Authority within the preceding four reporting years or is seeking to do business with the ~~e~~City, or with any of the other aforementioned entities, no lobbyist registered with the ~~b~~Board of ~~e~~Ethics shall make contributions in an aggregate amount exceeding \$1,500.00: (i) to any candidate for ~~e~~City office during a single candidacy; or (ii) to an elected official of the government of the ~~e~~City during any reporting year of his term; or (iii) to any official or employee of the ~~e~~City who is seeking election to any other office. For purposes of this section all contributions to a candidate's authorized political committees shall be considered contributions to the candidate. A reporting year shall be from January 1st to December 31st. For purposes of this subsection only "seeking to do business" means: (i) the definition set forth in Section 2-156-010(x); and (ii) any matter that was pending before the ~~e~~City ~~e~~Council or any ~~e~~City ~~e~~Council ~~e~~Committee in the six months prior to the date of the contribution or any matter that will be pending before the City Council or any City Council Committee in the six months after the date of the contribution, if that matter involved the award of loan funds, grant funds or bond proceeds, bond inducement ordinances, leases, land sales, zoning matters, the creation of tax increment financing districts, concession agreements or the establishment of a Class 6(b) Cook County property tax classification.

(Omitted text is not affected by this ordinance)

SECTION 2. 17-13-0300 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and by inserting the language underscored, as follows:

17-13-0300 Zoning map amendments (rezonings).

(Omitted text is not affected by this ordinance)

17-13-0306 Hearing – City Council Committee on Zoning, Landmarks and Building Standards. If The the City Council Committee on Zoning, Landmarks and Building Standards must fails to hold a substantive hearing on the merits of all each zoning map amendments within 180 days after the application is filed by the City Clerk and referred to the Committee, the application will be considered to have been denied by the City. Written, Published and Posted Notice of the City Council Committee on Zoning, Landmarks and Building Standards' public hearing must be provided in accordance with Sec. 17-13-0107-A, Sec. 17-13-0107-B and Sec. 17-13-0107-C.

(Omitted text is not affected by this ordinance)

17-13-0309 Inaction by City Council. If the City Council does not take final action on a proposed zoning map amendment within 6 9 months of the day the application is filed by the City Clerk and referred the City Council Committee on Zoning, Landmarks and Building Standards with the City Council, the application will be considered to have been denied by the City.

(Omitted text is not affected by this ordinance)

17-13-0312 Tolling. The time periods specified in Sec. 17-13-0306 and Sec. 17-13-0309 shall be tolled when an applicant for a zoning map amendment requests, in writing, that the City Council Committee on Zoning, Landmarks and Building Standards delay or defer considering the matter for a specified period of time. The time periods shall be tolled only for the duration specified in the applicant's written request.

SECTION 3. Section 10-20-415 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and by inserting the language underscored, as follows:

10-20-415 Application – Insurance – Notice – Appeal.

(Omitted text is not affected by this ordinance)

(d) Prior to issuing a use of public way permit for a driveway, the commissioner shall give 20 days written notice of the proposed issuance of the permit to the alderman of the ward in which the proposed driveway is to be located, and provide the alderman an opportunity to submit to the commissioner written objections or concerns regarding traffic, public safety, or other pertinent areas of potential impact. The commissioner shall keep such written objections or concerns, and any departmental action taken thereto on file with the application. ~~and no~~ No permit shall be valid unless such notice is delivered; provided, however, that the affidavit of the commissioner showing delivery of such notice to such alderman in person or by mailing to such address as the alderman may have filed with the city clerk, shall be conclusive evidence of delivery of such notice.

(Omitted text is not affected by this ordinance)

SECTION 4. Section 13-32-030 of the Municipal Code of Chicago is hereby amended by deleting the language struck through and by inserting the language underscored, as follows:

13-32-030 Applications.

(Omitted text is not affected by this ordinance)

Except in the case of residential garages, fence installation or repairs or repairs to buildings to meet code requirements, prior to issuing a building permit, the Building Commissioner shall give ten days' written notice of the proposed issuance of the permit, together with an opportunity to provide in writing any building code-based concerns or objections within the ten-day period, to the alderman of the ward in which the proposed work to be done is to be located. The commissioner shall maintain on file such written objections or concerns. ~~and no~~ No permit shall be valid unless such notice is delivered; provided, however, that the affidavit of the Building Commissioner showing delivery of such notice to an alderman in person or by mailing to such address as he may have filed with the City Clerk, shall be conclusive evidence of delivery of such notice. In cases of emergencies, a permit may be issued, to take immediate effect, under the Building Commissioner's authority. And the Building Commissioner shall notify the alderman of the ward in which the proposed work to be done is located of the issuance of such permit within 24 hours of the issuance thereof.

SECTION 5. Except for changes made to Section 2-156-445, this ordinance shall take effect upon its passage and approval. After passage and approval, changes made to Section 2-156-445 by this ordinance shall take effect on May 1, 2019.