



BOARD OF ETHICS
CITY OF CHICAGO

MEMORANDUM

To: Board of Ethics
From: SA 0792
Steve Berlin, Executive Director
Date: April 26, 2019 – **revised April 29, 2019**
Re: Draft amendments to the City's ethics laws from the Board of Ethics

In light of the imminent change in administrations, the Board has a unique opportunity to propose amendments to the City's ethics laws. The Board inherently retains this authority, pursuant to §§2-156-380(e) and -(f)¹ of the Governmental Ethics Ordinance (chapter 2 of the Municipal Code of Chicago). However, a change in administrations offers the chance to propose more far-reaching reforms, not only to the Ordinance itself, but to other laws or rules that affect "ethical conduct." Board staff has been working on these proposals for months. The proposed amendments are borne of experience: we live with this law day-to-day, have our fingers on the pulse of ethics issues coursing through the City's workforce and elected officialdom and the various regulated communities, and know where the law could use tightening, and where other jurisdictions have solved problems this law doesn't address, or doesn't adequately address.

Attached is a version that contains the proposed changes so far **[red-lined to show additions and deletions]**, with extensive commentary, in **[blue brackets]**. Comments made by Board members and members of the public present at the Board's April 26 meeting at which this draft was distributed and discussed are in **green text**. The plan is to discuss as much of this in open session as possible, and to invite any questions or suggestions from members of the public or media in the audience, then incorporate those suggestions into a final package for the Board to approve at its May meeting. We have advertised this and alerted the current and next administration of our intention. The goal is to have a final document that the Board can publicly present to the new Mayor and City Council soon after they are sworn in.

We welcome public comment on our suggestions. Please send comments in writing to me at steve.berlin@cityofchicago.org. We will endeavor to work suggestions into our next draft, which we will present to the Board at its May meeting for final approval and submission to the Mayor and City Council.

The proposed changes are organized into three sections. Section 1 contains proposed changes to chapter 2-156 of the Municipal Code, the Governmental Ethics Ordinance. Second 2 contains proposed changes to the Rules of the City Council; Section 3 contains proposes changes to chapter 2-56 of the Municipal Code, the enabling ordinance of the Office of Inspector General ("IG").

¹ These provide, respectively, that the Board of Ethics shall have the power and duty to: (i) consult with city agencies, official, and employees on matters involving ethical conduct"; and (ii) "recommend such legislative action as it may deem appropriate to effect the policy of this chapter."

"High level" summaries of these draft proposals were presented to a member of the Mayor-Elect's transition team recently, at the member's request, and also sent to the Chief of Staff of the Mayor-Elect's transition team at his request. Here is a summary of the proposals (which follow after this Memo):

Lobbying reforms:

--considering adding an exemption to the definition of "lobbyist" for those who are employees or officials of other government units and "lobby" on those governments' behalf;

--add an exemption to the definition of "lobbyist" for *bona fide* salespersons who are paid on commission [many jurisdictions have this--we've been pushing for it since 2001];

--enact a law regulating "grassroots lobbying";

--consider amending the Ethics Ordinance to prohibit lobbying on the City Council floor. Such a ban is currently in the City Council's rules, but could be codified in the Ethics Ordinance so it becomes enforceable, with fines for violations.

Ethics reforms:

--add a "misuse of office or position" provision that would prohibit City elected officials, appointed officials, or employees from using the prestige of their position for their own private gain or that of another person (like a friend), regardless whether that gain is monetary or non-monetary;

-- expand the provisions in the Ordinance (§2-156-130(b)) that prohibit City employees and officials from managing contracts with persons or firms that employ or contract with their relatives so that they would be prohibited from performing a *wide range* of City activities with respect to such persons or firms (not just exercising contract management authority), including, without limitation, reviewing permits and licenses and conducting inspections, and make it a violation for a firm or company to hire or retain a relative of a City employee or official with the intent of skirting this prohibition;

--make clear that gratuities are prohibited to City employees and officials for doing their City jobs, in §2-156142(f);

--explicitly enable Chicago Police Department Personnel to work private security jobs within City limits [this would not affect the current near-prohibition on *owning* security firms with City contracts or subcontracts];

--rewrite the "employee-to-employee" gift restrictions so they're clear and easy to understand [they're neither now];

--expand the definition of "City owned property" to include the City seal, as well as intellectual property, equipment, machinery or other tangible items used by the City for City business purposes, so that no City employee or official may use these without authorization, and subject candidates for elected City office to the prohibition against using City property for political or other unauthorized purposes.

City Council ethics reforms:

--short of an outside employment ban on aldermen [As Executive Director, I'm not in favor of that for a host of reasons], prohibit aldermen from representing clients or receiving compensation or income from the representation of clients in tax abatement, bankruptcy, environmental or other proceedings that impact City revenue, or the health, safety or welfare of City residents **Note: the Board members had a robust discussion at the April 26 meeting about whether the position of alderman should be full-time, or whether there may be an annual cap imposed on the amount of outside income aldermen could receive – some Board members expressed reservations about this because any amount set would**

seem arbitrary, but all agreed that there must be more strenuous regulation of aldermanic outside employment. I explained my position on this issue: I believe that any fundamental change like this must come from the City Council itself and would be most effective in connection with changing the number of City Council members from 50 to a lower number and an upward adjustment of aldermanic salaries, and that such a ban could discourage members of the public, such as small business owners, from running for alderman if they know they must liquidate their business interests during their service in office;

--require aldermen who are recusing from matters as required by law to physically leave the City Committee room while discussion and voting on the matter occurs [this prohibition would not extend to full City Council meetings, where physical absence is not necessary due to the hubbub that goes on during Council meetings];

--amend City Council "Rule 14" so that *all* aldermanic disclosures, *especially* the vast majority of them, which are not required by law but only by Rule 14 [and thus show aldermen going above and beyond what the law requires], are sent to the Board of Ethics so we can post them on our website. Currently such recusals are made public, if at all, through the Journal of Council Proceedings, but that is too hidden). We'll create both "required" and "non-required" disclosure sections.

Campaign financing; money in politics reforms:

-- close the gap in the law that enables officers, directors, partners, or members of business entities subject to the \$1,500 per candidate/per calendar year political contribution limit to *individually*, without reimbursement, contribute additional amounts up to the state law limit for individuals

-- subject City subcontractors and their key officers and owners to the \$1,500 per candidate/per calendar year political contribution limit;

-- consider subjecting labor unions to the \$1,500 per candidate/per calendar year political contribution limit;

--at the Board's April 26 meeting, Daniel Wolk submitted the comments attached to this document, urging the City to impose political contributions limitations specifically on real estate developers. Board staff is currently researching whether other jurisdictions have statutes on which the City could model an amendment accomplishing this.

Financial disclosure reforms:

-- define "City Council contractor" to include individuals paid by aldermen, or City Council committee chairs, or City Council caucuses, to perform government-related services, and require these individuals to file annual Statement of Financial Interests, and enable the IG to audit these contracts;

--add a fine for candidates who knowingly file a false or misleading Statements of Financial Interests.

Investigations and enforcement reforms

--raise fines for Ethics Ordinance violations [other than late training or late filing violations] to between \$500 and \$5,000 or even \$10,000 per violation, from the current range, which is \$500-\$2,000 for most violations, and enable the Board to issue public censures;

--consider changes consistent with due process of law that would enable the Board to issue an advisory opinion where the Law Department and Department Head (or alderman, if a City Council employee was the subject of an investigations) believe that findings from an IG investigation are clear, and wish to impose discipline or terminate an employee quickly. We understand there have been cases brought by the IG

where potential ethics violations are not investigated or pursued because of the perception that Board adjudications take too long, and this reflects a flaw in the current system;

--consider enabling the IG to investigate any *Ethics Ordinance* complaint where the last alleged bad act took place no more than 3 years before the complaint, rather than 2, as in current law, and extend the IG's time to complete ethics investigations from 2 to 3 years;

-- require more coordination at the commencement of and during ethics investigations between the Board and the IG, consistent with the requirements of due process, to ensure that both our agencies' resources are used most effectively.

Organizational suggestion

Have an annual public "ethics symposium day," where members of the public can attend, make suggestions and ask questions, and representatives from the Board would attend, as well as other local ethics luminaries, including the Mayor.

attachments



BOARD OF ETHICS
CITY OF CHICAGO

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 inserting the underscored language and, where applicable, deleting ~~scored-through language~~, as follows:

(Omitted sections are unaffected by this ordinance.)

2-156-005.Code of conduct.

~~(a) The code of conduct set forth in this section shall be aspirational and shall guide the conduct of every official and employee of the city. All officials and employees of the city shall:~~

- ~~— (1) — remember that they are public servants who must place loyalty to the federal and Illinois constitutions, laws, and ethical principles above their private gain or interest.~~
- ~~— (2) — give a full day's work for a full day's pay.~~
- ~~— (3) — put forth honest effort in the performance of their duties.~~
- ~~— (4) — treat members of the public with respect and be responsive and forthcoming in meeting their requests for information.~~
- ~~— (5) — act impartially in the performance of their duties, so that no private organization or individual is given preferential treatment.~~
- ~~— (6) — refrain from making any unauthorized promises purporting to bind the city.~~
- ~~— (7) — never use any nonpublic information obtained through the performance of city work for private gain.~~
- ~~— (8) — engage in no business or financial transaction with any individual, organization or business that is inconsistent with the performance of their city duties.~~
- ~~— (9) — protect and conserve city property and resources, and use city property and resources only for authorized purposes or activities.~~
- ~~— (10) — disclose waste, fraud, abuse, and corruption to the appropriate authorities.~~
- ~~— (11) — adhere to all applicable laws and regulations that provide equal opportunity for all persons regardless of race, color, religion, gender, national origin, age, sexual orientation, or handicap.~~

~~(b) At the time of employment or becoming a city official, every city official or employee shall sign, in a form prescribed by the board of ethics, a commitment to follow the city's code of conduct set forth in this section. The department of human resources shall administer such commitment and provide a copy of the commitment to each employee at the time of hiring. The board shall administer such commitment and provide a copy of the commitment to each city official at the time of the swearing-in or appointment of the official.~~

~~(c) This section is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the city, its departments, agencies, or entities, its officers, employees, or agents, or any other person.~~

[Comment: in the Board's view, the "aspirational code of conduct," which was added to the Governmental Ethics Ordinance ("Ordinance") in 2012, weakens the perception that ethics is taken seriously. The Board recommends that it be scrapped. Its key provisions are *already* embodied in various sections of the Governmental Ethics Ordinance and the Personnel Rules. Some of its aspirations, such as (4), should remain aspirational, and should be up to voters, not Ethics Commissions or Inspectors General, to vigil.]

2-156-010 Definitions. The following definitions shall apply for purposes of this chapter:

(c-2) "Candidate" or "candidate for City office" means any person who seeks nomination for election, election to or retention in any elected office of the government of the city, whether or not such person is elected. A person seeks nomination for election, election or retention if he or she (1) takes the action necessary under the laws of the State of Illinois to attempt to qualify for nomination for election, election to or retention in public office, or (2) receives contributions or makes expenditures, or gives consent for any other person to receive contributions or make expenditures with a view to bringing about his or her nomination for election or election to or retention in such office. For purposes of this definition, the term "expenditure" has the meaning ascribed to that term in Article 9 of the Illinois Election Code, codified at 10 ILCS 5/9-1 et seq.

[Comment: this addition grows out of the Board's experience in the recently concluded election cycle. It would close a gap in current law, and hold candidates to many of the same restrictions as City employees and officials, especially with regard to the use of the City seal.

Further, the Board will issue a formal opinion determining that including bank information on a D-1 filed with the Illinois State of Elections constitutes giving consent for the receipt of contributions, thus qualifying the person as a candidate for Governmental Ethics Ordinance purposes. In the past election cycle, some candidate committees filed D1's as "exploratory committees" – there is no such thing – and believed that, as long as they did not actually accept contributions, they were still not candidates; still others thought the pivotal moment was when their filing petitions were accepted by the Board of Election Commissioners.]

(d-1) "City council employee" shall mean an individual employed by an alderman or a city council committee, bureau, or other service agency of the city council; ~~whether part-time or full-time, including an individual retained as an independent contractor by any of them.~~

(d-2) "City council contractor" shall mean an individual retained as an independent contractor by any committee of the Chicago City Council or bureau or other service agency of the City Council or caucus of members of the City Council to provide services to any of them, provided that such services are related to city governmental functions and duties, excluding services related to the physical maintenance of city or aldermanic offices, such as, without limitation, painting, landscaping, or plumbing.

[Comment: this is a good government measure: persons who perform government services as "independent contractors" that are directly related to constituent services or ongoing ward issues, like real estate development, often influence City decisions, regardless whether they are paid with City funds or political funds, or a combination thereof. There must be some measure of accountability to the public regarding these individuals, whether they work for aldermen, City Council committees, or City Council caucuses. While these individuals would not be subject to the Governmental Ethics

Ordinance as employees or officials, but as contractors, they should file annual Statements of Financial Interests so the public can see who they are, which *other* clients they represent, and whether they have relatives who work for companies doing business with the City or who are lobbyists registered with the Board of Ethics. The drafting here would avoid the distracting issue of whether these individuals are "employees," as current law treats them. Of course they are not employees, nor are they lobbyists because they "represent" aldermen or City Council caucuses. But they do exert influence over City decisions and actions.]

(e-1) "City property" means: (i) the official corporate city seal, as authorized in Chapter 1-8-010 et seq. as amended; (ii) any building or portion thereof owned or exclusively leased by the city or any city agency; or (iii) any intellectual property or personal property, equipment, machinery, or other tangible items used by the city for city business purposes. "City property" does not, however, include any portion of a building that is rented or leased from the city or any city agency by a private person or entity.

[Comment: this expansion, when read in conjunction with §§2-156-010(c-2) and -060, would clarify that City property – which cannot be used without authorization – includes the official City seal, automotive/trucking equipment, computer and telecommunications equipment, including tablets and smart phones, and of course City real estate.]

(l) "Financial interest" means an interest held by an official or employee that is valued or capable of valuation in monetary terms with a current value of more than \$1,000.00 in any consecutive twelve-month period, provided that such interest shall not include: (1) the authorized compensation paid to an official or employee for any office or employment; or (2) a time or demand deposit in a financial institution; or (3) an endowment or insurance policy or annuity contract purchased from an insurance company; or (4) any ownership through purchase at fair market value or inheritance of the shares of a mutual fund corporation, regardless of the value of or dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; or (5) any ownership through purchase at fair market value or inheritance of not more than one-half of one percent of the outstanding common stock of the shares of a corporation, or any corporate subsidiary, parent or affiliate thereof, regardless of the dividends on such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended.

[Comment: this change codifies the Board's determination from its self-generated enforcement action in Case No. 17044.C. It clarifies that financial interest means \$1,000 in any consecutive twelve-month period, not over the life of a contract.]

(p) "Lobbyist" means any person who, on behalf of any person other than himself, or as any part of his duties as an employee of another, undertakes to influence any legislative or administrative action, including but not limited to: (1) a bond inducement ordinance; (2) a zoning matter; (3) a concession agreement; (4) the creation of a tax increment financing district; (5) the establishment of a Class 6(b) Cook County property tax classification; (6) the introduction, passage or other action to be taken on an ordinance, resolution, motion, order, appointment or other matter before the City Council; (7) the preparation of contract specifications; (8) the solicitation, award or administration of a contract; (9) the award or administration of a grant, loan, or other agreement involving the disbursement of public monies; or (10) any other determination made by an elected or appointed City official or employee of the City with respect to the procurement of goods, services or construction; provided, however, that a person shall not be deemed to have undertaken to influence any legislative or administrative action solely by submitting an application for a City permit or license or by responding to a City request for proposals or qualifications. It shall not constitute lobbying as defined here for an individual who is paid on a contingent or commission basis for the good faith sale of goods or services to contact a City

official or employee regarding the purchase by the City of such goods or services, provided that such individual is contacting only those City officials or employees who have responsibility for making purchasing decisions regarding such goods or services in the normal course of business.

[Comment: these are good government changes. Most other jurisdictions that regulate procurement lobbying have exemptions from lobbyist registration for *bona fide* salespersons, who are paid on commission. The Board has been pushing for this exemption since 2001, when the Ordinance was amended to explicitly include procurement lobbying, but an exemption for *bona fide* salespersons was not included. See Case No. 01021.A:

https://www.chicago.gov/dam/city/depts/ethics/general/AO_Lobby/01021AO-redact.pdf]

The term "lobbyist" shall include, but is not limited to, any attorney, accountant, or consultant engaged in the above-described activities; provided, however, that an attorney shall not be considered a lobbyist while representing clients in a formal adversarial hearing. The term "lobbyist" shall not include: (i) any employee or official of another government unit who engages in the above-described activities on behalf of that government unit; or (ii) any volunteer, employee, officer or director of a not-for-profit entity who seeks to influence legislative or administrative action solely on behalf of that entity. Provided further, that if (1) any person is paid or otherwise compensated to influence legislative or administrative action on behalf of a not-for-profit entity; and (2) such not-for-profit entity lobbies on behalf of its members that are for-profit entities or individuals engaged in a for-profit enterprise, such person shall be deemed to be a lobbyist within the meaning of this chapter; or (iii) a person who: (a) attends a meeting with an employee or official simply to provide technical information or address technical questions; or (b) attends a meeting to provide clerical or administrative assistance (including audio/visual, translation or interpretation and sign language); or (c) attends a meeting to observe for educational purposes; or (d) plays no role in the strategy, planning, messaging or other substantive aspect of the overall lobbying effort.

[Comment: these changes would:

(i) establish a government-to-government exception, which already exists in the post-employment provisions (although we recognize that there is a counter argument, recently articulated by the Florida State Ethics Commission:

<https://www.jacksonville.com/news/20190412/ethics-opinion-restricts-jacksonville-city-council-members-lobbying-for-two-years>): and

(ii) clarify that the kind of "two-tier" non-profit whose staff would not be exempt from registering as lobbyists is a membership organization whose key personnel "lobby" (as defined) to advance the interest of its typically dues-paying members, like industry associations and chambers of commerce*; and

(iii) codify the Board's consistent advice to those who ask whether colleagues who accompany registered lobbyists to meetings with City officials or employees but who really are accompanying the lobbyists not to further influence the judgments or actions of City officials or employees, but to provide background assistance or simply be trained by their employer, who is either the lobbyist or the lobbyist's client, that such accompanying persons are not thereby "lobbying." The Board has been advising that, if such accompanying persons are introduced by name, or hand out business cards, or speak, they must register as lobbyists. This proposal would clarify that.

*The exemption for non-profits and their internal staff members or directors – their outside, paid contract lobbyists have never been exempt – was added to the Ordinance in 2000, then curbed in July 2011 to exempt only internal staffers or directors of "one-tier" non-profits, namely, those without for-profit members. The original proposal in 2011 would have removed the exemption for all non-

profits, but the Emanuel Administration encountered fierce opposition from the non-profit community and in response created the "one tier/two tier" distinction. Nonetheless, there is much "lobbying" that occurs on behalf of non-profits such as social service agencies, universities, and religious organizations that is not being captured under current law. The Board recommends that the City examine this in detail, because the public has an interest in knowing who from the non-profit community is influencing or attempting to influence their public officials. However, it is likely the Lightfoot Administration can expect the same level of vociferous opposition to such a proposal from the non-profit community.]

(v-1) "Prohibited political activity" means:

(5) Surveying or gathering information from potential or actual voters in an election to determine probable vote outcome in connection with a campaign for elective office or on behalf of a political organization for political purposes or for or against any referendum question.

(6) Assisting at the polls on election day on behalf of any political organization or candidate for elective office or for or against any referendum question.

[Comment: aldermanic staff deal with liquor referenda and must assess the views of the area concerned; this should be excluded from the list of prohibited political activities because it furthers a legitimate government purpose.]

2-156-021. Misuse of Office or Position. No employee or official may knowingly use the prestige of their office or public position for their own private gain, or that of another, whether monetary or non-monetary; provided, however, that nothing in this subsection shall prohibit an official or employee from providing usual and customary constituent services without additional compensation, or an employee from performing his or her duties of City employment.

[Comment: This provision would expand on the concept of fiduciary duty. This Board and other ethics commissions have traditionally limited the application of the fiduciary duty provisions to situations in which government personnel use the authority of their government position to benefit themselves or others financially. Nonetheless, financial benefit is not the only type of gain to achieve that could tempt someone to misuse their government position. Examples this Board has seen are elected officials bullying, browbeating or threatening local businesses with respect to these business's tenants, perhaps to benefit a political contributor, or threatening City departments with adverse publicity to affect the timing or outcome of ongoing investigations or other regulatory matters that would benefit friends or other persons who have no monetary relationship with the City official or employee. Cf., e.g. MD State Govt Code § 5-506 (2013).

Would or should this cover one alderman acting unprofessionally or disrespectfully toward another? Answer: no. Such conduct, while embarrassing to the City and offensive, is not and should not be considered a violation of the law. In an appropriate case, the Board may make public comment about such behavior under 2-156-380(3), which authorizes the Board to consult with City agencies, official and employees on matters involving ethical conduct. Such consultations, if not done as advisory opinions, would be public. It could be argued that the Board should be able to censure an alderman for such behavior, and that in order to censure someone there must a violation of some provision in the ordinance. However, the only way this could occur is to add a provision mirroring Personnel Rule

XVII.50, which establishes a “conduct unbecoming” standard. The Personnel Rules do not cover aldermen; the Board could recommend this, but it’s a bad direction to move -- such cases should not be adjudicated legally, but rather by the ballot box. As stated above, if the Board feels strongly enough about a City official’s or employee’s “bad behavior” it can use 380(3) to publicly comment that, were there a conduct unbecoming provision in the ordinance, the Board would properly censure the official or employee. This accomplishes the same purpose without the hassle, expense, delay, and secrecy of a probable cause finding and adjudication,]

2-156-030. Improper influence.

(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 the official or the official's domestic partner or spouse ~~he~~ has derived any income or compensation during the preceding twelve months or from whom or which any of them ~~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, or participate in any discussion in any City Council meeting or vote on any matter involving a the person with whom the elected official or the official's domestic partner or spouse 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 any of them ~~he~~ has derived any income or compensation during the preceding twelve months or from whom or which any of them ~~he~~ reasonably expects to derive any income or compensation in the following twelve months.

With regard to any such 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 official's domestic partner or spouse, or from whom either the official or spouse or domestic partner has derived any or compensation in the previous or following twelve months, the official shall disclose in writing to the Board of Ethics within 24 hours of any such person who requests that the official contact, either orally or in writing any other city official or employee with respect to any matter involving the person. Such disclosure shall state the name of the person and the nature of the business relationship that creates a financial relationship on the part of the official, spouse or domestic partner, or the nature of compensation or income derived in the previous or following twelve month period. The Board of Ethics shall review any disclosure made under this subsection and shall determine whether the member has provided sufficient details regarding the conflict of interest, and may request more detail if it deems that is necessary, shall post such disclosures, including any additional detail submitted by the member, on the Board of Ethics website, in a searchable format, immediately upon receipt.

[Comment: this would expand one of two conflict of interests sections in the Ordinance to ensure that aldermen or other elected officials do not improperly “lobby” other City officials or employees on, or vote on, matters affecting their spouse or domestic partner, and promptly disclose any request to engage in such “lobbying” by any person from whom or which the official or spouse received or expect to receive compensation or income in the two-year period surrounding the request, or in which the official or spouse have a financial interest.]

2-156-060. City-owned property. No official ~~or~~ employee, ~~or candidate for City office~~ shall engage in or permit the unauthorized use of any City property. ~~real or personal property owned or leased by the City for City business.~~

[Comment: See the comment to §2-156-010(e-1) above. This is a significant good government expansion.]

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

(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 the member has derived any income or compensation during the preceding twelve months or from which 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 Ethics of such interest within 96 hours of delivery by the Clerk to the member, of the introduction of any ordinance, resolution, order or other matter in the City Council, 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 state 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 details 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 Board of Ethics shall post such disclosures, including any additional detail submitted by the member, on the Board of Ethics website, in a searchable format, immediately upon receipt. The member ~~He~~ shall abstain from participating in any discussion concerning or voting on the matter, and remove him- or herself from the committee meeting room during such discussion and/or vote, 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 city council is or should be aware of such potential conflict.

(2) To avoid even an appearance of impropriety, any member of the City Council who has any business relationship with a person or entity with a matter pending before the City Council or any City Council Committee: (i) that creates a financial interest on the part of such member, or the domestic partner or spouse of such member, or (ii) from whom or which the member, or the domestic partner or spouse of such member, has derived any income or compensation during the preceding twelve months or from whom or which the member or the domestic partner or spouse of such 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 City Council and the City Council Committee, and shall also notify, with the same detail, the Board of Ethics of such relationship within 96 hours of delivery by the Clerk to the member, of the introduction of any ordinance, resolution, order or other matter in the City Council, 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 Board of Ethics shall post such disclosures, including any additional detail submitted by the member, on the Board of Ethics website, in a searchable format, immediately upon receipt. The member shall abstain from participating in any discussion concerning and voting on the matter, and remove him- or herself from the committee meeting room during such discussion and/or vote, 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 City Council is or should be aware of such potential conflict. For purposes of this subsection (ii) only: "matter pending before the City Council or any City Council Committee" shall refer to council 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.

[Comment: see our comment to §2-156-030 above. This recommendation would also require aldermen to physically leave the committee room if they are recusing themselves from a matter as required by law. It would not require them to leave the City Council chamber during a full City Council meeting. While some may see this as insulting, it is the standard for appointed officials, and removes the possibility that one could influence votes with facial expressions alone. See https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/Ethics_booklet-moboco.pdf , page 3, 4(iii).]

2-156-090. Representation of other persons.

(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 City is a party and that person's interest is adverse to that of the City, or in any tax abatement, bankruptcy, or environmental protection or other proceeding that impacts anticipated City revenue, or the health, safety or welfare of City residents.

(d) No official or employee shall solicit or receive anything of value for providing opinion evidence as an expert against the interests of the City in any civil litigation or other judicial or quasi-judicial proceeding brought by or against the City.

[Comment: the change to §2-156-090(b) is far-reaching and in our opinion consistent with the Illinois Supreme Court's landmark 1990 opinion in *In re Vrdolyak*, <https://casetext.com/case/in-re-vrdolyak-1>

The Board believes it is appropriate to pass a law requiring attorney-aldermen to personally forego these kinds of law practices, and income therefrom, when they become elected City officials. It would not limit the ability of an alderman's law partners or associates from taking on this kind of work, but there would need to be an activity- and fee-screening arrangement established between the alderman and the law firm. Further note: Board members had a robust discussion at the April 26, 2019 meeting as to whether the position of alderman should be "full-time" and the law should prohibit outside employment by aldermen, or perhaps whether there should be an income cap on such outside employment. A fundamental change like this, if implemented, would be best considered together with a different City Council-Mayor model, fewer City Council members, and potentially higher City salaries for fewer aldermen. Moreover, such a change might cause qualified and interested persons to rule out running for office and thus decrease diversity, particularly if they are small business owners who would need to liquidate their business interests. Most legislatures are part-time. Thus, this proposal does not call for an outside employment ban. Moreover, there would need to be a

rationale for prohibiting outside employment for aldermen but not for other City employees or officials. Before considering such a step, a white paper examining the experiences of other jurisdictions, particularly large cities, would be appropriate.

The addition of §2-156-090(d) would prohibit City personnel from becoming paid expert witnesses in arbitrations, administrative proceedings, and court cases where the City is an adverse party. The Board has been involved in matters where City employees took on this kind of work, but needed to apply the Ordinance's fiduciary duty section to prohibit it. This is more direct and effective.]

2-156-130. Employment of relatives or domestic partners

(b) No official or employee shall exercise contract management authority or knowingly participate in the making of any city administrative or legislative action or decision where any relative or the domestic partner of the official or employee is employed by or has contracts with persons doing or seeking such city contract, action or decision. ~~city work over which the city official or employee has or exercises contract management authority.~~

(c) No official or employee shall use or permit the use of his or her position to assist any relative, or his domestic partner in securing employment or contracts with persons over whom the employee or official exercises contract management authority or with respect to whom he or she knowingly makes or participates in the making of any city administrative or legislative action or decision. The employment of or contracting with a relative or domestic partner of such a city official or employee by such a person within six months prior to, during the term of, or six months subsequent to the period of a city contract or the making of such action or decision shall be evidence that said employment or contract was obtained in violation of this chapter.

(d) No person shall, with intent to violate this section, hire or retain any relative or domestic partner of a City employee or official who exercises contract management authority with respect to the person's City contracts or who participates in administrative or legislative actions or decisions involving the person.

[Comment: these are good government changes, and expand a too-narrow nepotism prohibition. Current law prohibits City employees and officials only from managing contracts with persons or firms that employ or contract with their relatives. This change would expand the ban to prohibit them from performing a *full range* of City activities with respect to persons or firms that hire or contract with their relatives, such as reviewing permits and licenses and conducting inspections, and make it a violation for a firm or company to hire or retain relatives of a City employees with the intent of skirting this prohibition. It arises from a recent case that came through the Department of Business Affairs and Consumer Protection ("BACP") and IG. We include it here at the suggestion of BACP and the Law Department.]

2-156-135. Prohibited political activities.

(b) No official, ~~or~~ employee or candidate for City office shall intentionally misappropriate any city property or resources of the city in connection with any prohibited political activity; provided, however, any official, ~~or~~ employee or candidate for City office may reserve and rent a city-owned facility at a fair market value before any such activity or event connected therewith.

[Comment: see the changes to §§2-156-010(e-1) and -060 above, with which these changes should be read in conjunction.]

2-156-142. Offering, receiving and soliciting of gifts or favors.

(d) The restriction in subsection (a) shall not apply to the following:

(12) Reasonable hosting, including travel and expenses, entertainment, meals or refreshments furnished in connection with meetings, appearances or public events or ceremonies related to official city business, if furnished by the sponsor of such meeting or public event or ceremony, and further provided that such travel and expenses, entertainment, meals or refreshments ~~have been approved in advance by the board and~~ are reported to the ~~B~~board within 10 days of after acceptance thereof. Any other provision in this chapter notwithstanding, no official or employee including the Mayor and members of City Council shall knowingly solicit or accept any ticket of admission or other evidence of right of entry to any entertainment event, such as, but not limited to, musical concerts and dramatic productions, or to any athletic events, as a gift or for a value less than the price printed on the ticket, which would not be offered or given to such official or employee if such person were not an official or employee. For purposes of determining whether such ticket would be offered or given by reason of the official's or employee's position with the city, it shall be presumed that the offer of such ticket or right of entry from a member of the official's or employee's immediate family or from a business other than a public agency in which the official or employee, or a member of the official's or employee's immediate family, serves as an officer, director, stockholder, creditor, trustee, partner, or employee, is not made by virtue of that official's or employee's position. Any official or employee who is performing an official duty at an entertainment event shall be exempt from this section with regard to that particular entertainment event.

[Comment: This change would codify the Board's decision regarding Cubs World Series tickets, Case 16032.A:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Deck%20Chairs/LXIV/16032.A.pdf>]

(f) No official or employee, or the covered relative of such official or employee, shall solicit or accept any money or other thing of value including, but not limited to, gifts, gratuities, favors, services or promises of future employment, in return for advice or assistance on matters concerning the operation or business of the city; provided, however, that nothing in this section shall prevent: (i) an official or employee, or the covered relative of such official or employee from accepting compensation for services wholly unrelated to the official's or employee's city duties and responsibilities and rendered as part of his or her non-city employment, occupation or profession; or (ii) any member of the sworn force of the police department from being employed in the private security field, provided that such member has received any required approval from the police Superintendent therefor and complied with all rules and regulations promulgated by the police Superintendent relating to such employment.

[Comment: these changes would make clear that: (i) tips are forbidden to City employees and officials for City services; and (ii) as a matter of public policy, off-duty Chicago Police Officers may work security, consistent with Police Department regulations and applicable collective bargaining agreements, though they would remain subject to §2-156-110, which effectively prohibits City employees from having a financial interest – an ownership interest – in any City work, contract, or business.]

2-156-143. Employee-to-employee gifts.

(a) For purposes of this section, the following definitions shall apply:

"Official superior" means any employee, including but not limited to an immediate supervisor, whose official responsibilities include directing or evaluating the performance of other employees' official duties or those of any other supervisor of the employee. For purposes of this section, the term "official superior" shall also include the mayor. Additionally, for purposes of this section, an employee is considered to be the subordinate of any of his official superiors.

"Solicit" means to request contributions by personal communication or by general announcement.

"Voluntary contribution" means a contribution given freely, without pressure or coercion. A contribution is not voluntary unless it is made in an amount determined by the contributing employee, except that where an amount for a gift is included in the cost for a luncheon, reception or similar event, an employee who freely chooses to pay a proportionate share of the total cost in order to attend such event shall be deemed to have made a voluntary contribution.

(b) Except as provided in this section, an employee shall not (i) give a gift to or make a donation towards a gift for an official superior; or (ii) solicit a contribution from another employee for a gift to either his own or the other employee's official superior.

(c) Except as provided in this section, an employee shall not accept a gift from an employee receiving less pay than himself unless: (i) the two employees are not in a subordinate-official superior relationship; and (ii) there is a personal relationship between the two employees that would justify the gift.

(d) The restriction in subsections (b) and (c) shall not apply to the following:

~~— (1) — On an occasional basis, including any occasion on which gifts are traditionally given or exchanged such as birthdays or holidays, the following may be given to an official superior or accepted from a subordinate or other employee receiving less pay:~~

~~— (i) — Items, other than cash, but including gift cards, with an aggregate market value of \$10.00 or less per occasion;~~

~~— (ii) — Items such as food and refreshments to be shared in the office among several employees;~~

~~— (iii) — Personal hospitality provided at a residence which is of a type and value customarily provided by the employee to personal friends; or~~

~~— (iv) — Items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions.~~

~~— (2) — A gift appropriate to the occasion may be given to an official superior or accepted from a subordinate or other employee receiving less pay:~~

~~— (i) — In recognition of infrequently occurring occasions of personal significance such as marriage, illness, or the birth or adoption of a child; or~~

~~— (ii) — Upon occasions that terminate a subordinate-official superior relationship, such as retirement, resignation, or transfer.~~

~~— (3) — An employee may solicit a voluntary contribution of no more than \$20.00 from a fellow employee for an appropriate gift to an official superior and an employee may make a voluntary contribution of \$20.00 or less to an appropriate gift to an official superior:~~

~~— (i) — On a special, infrequent occasion as described in subsection (d)(2) of this section; or~~

~~—(ii)— On an occasional basis, for items such as food and refreshments to be shared in the office among several employees. An employee may accept such gifts to which a subordinate or other employee receiving less pay than himself has contributed.~~

(1) voluntary contributions, including gift cards but not cash, from a group of employees to an official superior or the relative of an official superior in any amount, provided: (i) the voluntary contribution or gift is in recognition of holidays, occasions of religious significance, occasions of personal significance including weddings, engagements, birthdays, birth or adoption of children, illness, a relative's illness or death, events presenting a housing emergency, such as a fire or tornado, occasions of professional significance, including hirings, promotions, or noteworthy accomplishments or achievements, retirements, transfers or resignations; and (ii) that any employee may make a contribution of up to \$25 for such a gift;

(2) gifts, including gift cards but not cash, from a subordinate to an official superior or relative of an official superior in an amount not to exceed \$50, provided: (i) the gift is in recognition of holidays, occasions of religious significance, occasions of personal significance including weddings, engagements, birthdays, birth or adoption of children, illness, a relative's illness or death, or events presenting a housing emergency, such as a fire or tornado, occasions of professional significance, including hirings, promotions, or noteworthy accomplishments or achievements, retirements, transfers or resignations; and (ii) that any employee may make a contribution of up to \$50 for such a gift;

(3) gifts or items given in connection with the receipt of personal hospitality if of a type and value customarily given on such occasions; and

(4) items such as food and refreshments to be shared in the office among several employees, in which case an employee may accept such gifts to which a subordinate or other employee has contributed even if the contributing employee(s) receive less pay.

(e) Notwithstanding any other provision of this section, an official superior shall not coerce a gift from a subordinate.

[Comment: the most vexing section in the Ordinance is the "employee-to-employee gifts" section, which began as a Mayoral Executive Order in 2011 then was codified in November 2012. We believe this proposal greatly simplifies it: (i) no one should ever feel coerced to give a gift to a superior; (ii) group gifts to a superior for traditional gift-giving or life events [like Xmas, birthdays, marriage, divorce, birth of a child, illness, leaving City employment, etc.] are fine up to \$25 per donor, including gift cards, as long as no one is coerced or punished for not giving; (iii) individual gifts to superiors for events listed in (ii) are fine up to \$50; and (iv) all other gifts to superiors are prohibited.]

2-156-150. Statements of financial interests.

(a) For purposes of this article, the following persons shall be referred to as "reporting individuals":

(v) Each city council employee and city council contractor who is not solely clerical;

[Comment: see §2-156-010(d-2). City Council contractors should be subject to at least this measure of accountability.]

2-156-211. Grassroots lobbying.

[Comment: we recommend that the City add a provision that would define and regulate grassroots lobbying, and stand at the ready to assist in drafting such a provision. Grassroots lobbying is defined as attempts to influence legislation by attempting to affect public opinion with respect to the legislation and encouraging the audience to take action with respect to the legislation. Some jurisdictions include “grassroots” lobbying in their laws, and others (like the State of Illinois) require organizers of “grassroots” campaigns to register or submit reports, or even, in some instances, require the persons who actually make the contact with governmental personnel to report. See

Chicago:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/GRASSROOTS.docx>

Illinois: https://www.cyberdriveillinois.com/publications/pdf_publications/sos_ig21.pdf;

New York State: <https://jcope.ny.gov/system/files/documents/2018/05/part-943-comprehensive-lobbying-regulations-5918.pdf>];

and San Francisco, where it is called “expenditure lobbying”:

<https://sfethics.org/laws/lobbyists/annotated-prop-c-regulations>]

2-156-301. Lobbying during City Council meetings

No person shall at any meeting of the Council lobby or solicit any Alderman to vote for or against any person or proposition. Nothing in this provision is intended to limit debate by Aldermen on any pending matter, or to prohibit discussion between Aldermen, or between Aldermen and any City employee, concerning a pending matter.

[Comment: Board staff has been advised that former aldermen, and possibly others, may have engaged in lobbying on the Council floor, during City Council meetings. While that practice is prohibited by City Council Rule 8, the Board recommends that this prohibition be codified so that it can be enforced by the Board and if necessary the IG.]

2-156-385. Probable cause finding.

The inspector general may request the board to issue a finding as to whether evidence shows that there is probable cause to believe that the subject of an investigation (for purposes of this section, “subject”) has violated this chapter, as follows:

(4) After reviewing all the documents and evidence submitted by the parties, including oral and written responses, the board may; (i) seek to settle the matter by fine, ~~discipline~~, or in such other manner as it deems appropriate; ~~(ii) pursue an action for discipline;~~ (ii) pursue an action for a fine; or ~~(iii) take no action and dismiss the matter. If a settlement agreement involves the imposition of discipline and the subject is a current employee, such settlement agreement must be approved by the head of the city department, agency or office in which the employee works.~~ If a settlement is reached, the full final settlement agreement, including the name of the subject of the investigation and the disciplinary measure imposed on him, shall be made publicly available to the extent allowable under applicable law.

~~(6) If the subject is a current employee and the board determines to pursue an action for discipline instead of a fine, within 40 days of such determination, the board shall submit a written recommendation, with all the evidence and documents supporting the board's recommendation: (i) to the mayor, if the employee is a department head or an appointed official; (ii) to the chairman of the~~

~~city council committee or to the alderman for whom the employee works, if the employee is a city council committee or to the alderman for whom the employee works, if the employee is a city council employee; or (iii) to the head of the department or agency in which the employee works, if the employee is neither a department head, appointed official or a city council employee. A person to whom the board has transmitted its recommendation for action shall, within 30 days of receipt of the recommendation, report to the board in writing the actions taken on the recommendation and, to the extent that the person declines to take any recommended action, provide a written statement of reasons for his decision.~~

(6) If the Corporation Counsel and the department head of the subject's city department, or, if the subject is a City Council employee, the alderman or chair of the City Council Committee to whom the subject reports, wish to pursue an action for discipline instead of a fine based on a completed investigation by the office of inspector general into one or more violations of this chapter, the Law Department may, in writing specifying that this is the wish of the department head or alderman, request that the Board of Ethics issue an advisory opinion addressing whether the set of facts provided constitutes one or more violations of this chapter.

[Comment: consistent with due process of law, this change would enable the Board to issue an advisory opinion in cases where the Law Department and Department Head [or alderman, if the subject is a City Council employee] believe that findings from an IG investigation are clear, and wish to impose discipline or terminate an employee. The Board has been made aware of cases where potential Ethics Ordinance violations may not have been pursued by the IG because of the perception that Board of Ethics adjudications take too long, and there is a problem employee still operating.]

2-156-400 Confidentiality.

Adjudications, regulatory or Board-initiated enforcement matters conducted by, and advisory opinions issued by and complaints to the board, or and determinations and or recommendations on any of the foregoing thereon shall be confidential, except as provided in this chapter or as necessary to carry out powers and duties of the board or to enable another person or agency to consider and act upon the notices and recommendations of the board; provided that, without identifying the person complained against or the specific matter or transaction, the board may (a) comment publicly on such matters and recommendations and (b) publish summary opinions to inform city personnel and the public about the interpretation of provisions of this chapter.

[Comment: the Board has been pursuing its own enforcement actions where facts available to it in the public record warrant a finding of probable cause without an ethics investigation into the facts by the IG. The whole purpose of an ethics factual investigation by the IG is to assist the Board in determining whether there is probable cause to conclude that the Ethics Ordinance was violated. Where no factual investigation is necessary, the Board has found probable cause based on facts already available to it. This change would apply the same confidentiality requirements to these actions as already apply to Board advisory opinions and other adjudications, thereby codifying existing practice.]

2-156-402. Waivers.

(a) When requested by a current or former city official or employee, the board may grant a waiver from compliance with any of the following:

(1) The gift restrictions in Section 2-156-142(a) ~~to the extent they apply to material or travel expenses for meetings;~~

[Comment: waiver authority for business travel is unnecessary; waiver for gift questions should *not* be limited to business travel questions.]

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 City, or with any of the other aforementioned entities, no subcontractor to a prime contractor on a city contract, and no lobbyist registered with the Board of Ethics, and no labor organization as defined under federal or state law, shall make contributions in an aggregate amount exceeding \$1,500.00: (i) to any candidate for City office during a single candidacy; or (ii) to an elected official of the government of the City during any reporting year of the official's his term; or (iii) to any official or employee of the 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 or~~ (ii) any matter that was pending before the City Council or any City Council 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.

(b) For purposes of subsection (a) above, an entity and its subsidiaries, parent company or otherwise affiliated companies, and any of their ~~employees,~~ officers, members, directors and partners, or owners of 1% or more, who make a political contribution ~~for which they are reimbursed by the entity or its affiliates~~ shall be considered a single person. However, nothing in this provision shall be construed to prohibit an employee of such an entity or its affiliated companies from making a political contribution for which the employee is not reimbursed by the entity or affiliated companies, provided the employee is not also an officer, member, director, partner, or owner of 1% or more of the entity or its affiliated companies. ~~However, nothing in this provision shall be construed to prohibit such an employee, officer, director or partner from making a political contribution for which he is not reimbursed by a person with whom he or she is affiliated, even if that person has made the maximum contribution allowed under subsection (a).~~

[Comment: short of instituting a system of public financing of elections, as in cities such as New York City, Denver, and Seattle, these remain good government changes. The City may also wish to study moving to a ranked voting system, but that would not directly impact money in politics.

Two of the proposed changes above would further limit "corporate contributions." The first would apply the \$1,500 per candidate/per calendar year to City *subcontractors*; the second would close a gap in current law that enables officers, directors, partners, or members of business entities subject to the \$1,500 per candidate/per calendar year political contribution limit to contribute *additional* amounts up to the state law limit for individuals. This would put Chicago in line with other major jurisdictions, such as Illinois, New York City, Los Angeles, and San Francisco. This latter change would *not* apply to employees of persons doing or seeking to do business with the City, etc., provided these

employees: (i) are not reimbursed for their contributions in any way (which would violate multiple laws); and (ii) *are not also* officers, members, directors, or owners.

The third proposed change would subject labor unions to the \$1,500 per year per candidate limitation. (See Board Case No. 15041.A for a comprehensive explanation of how labor unions are treated by various campaign financing/money in politics laws in other jurisdictions:

https://www.chicago.gov/content/dam/city/depts/ethics/general/AO_CampFinancing/15041A.pdf).

It was reported recently that unions contributed \$9.7 million to candidates for the recently concluded elections. It is unclear how that compares with “corporate” contributions, but it is significant.

We note that several City Council members have expressed interest in raising the \$1,500 limit, which has been in effect since 1987 when the City Council first enacted the Campaign Financing Ordinance. The \$1,500 cap is in line with those of other big cities. In Los Angeles, the limits were \$1,400 for Mayoral contributions and \$700 for City Council candidates in the 2017 elections [but merely \$25 if the contributions were made by text]; the latter limit will be raised to \$800 for the 2020 elections. This is per election, not calendar year; primaries and general elections are separate. In Philadelphia, though, the limits are \$3,000 per election from individuals and \$11,900 from businesses other than corporations, which are prohibited by Pennsylvania state law from making political contributions (though they may make independent expenditures). In New York City, which has a public financing system in place, the limits on candidates not part of the public financing system for the 2021 citywide elections will be \$5,100 per election for Mayor; \$3,950 for Borough President; and \$2,850 for City Council members. For candidates opting into the public financing system, the limits are \$2,000, \$1,500 and \$1,000, respectively. New York City also prohibits direct contributions from corporations.]

2-156-465 Sanctions.

(b) *Fines.* The following fines shall, as appropriate, apply to violations of this chapter

(1) *Failure to complete ethics training.* Any employee or official who violates section 2-156-145 and any lobbyist who violates section 2-156-146 shall be ~~fin~~ ~~ed not less than \$200.00 nor more than \$750.00~~ **\$250** for each such violation. Each day that a violation continues shall constitute a separate and distinct offense to which a separate fine shall apply. The board shall also make public, in a manner that the board may deem appropriate, the names of lobbyists, employees and officials who failed to complete a mandatory ethics training on time.

[Comment: this change would make the fine for late training \$250 per day for employees, officials and lobbyists, pure and simple. There is no reason to have a range of fines for this kind of violation.]

(8) *Violation of Chapter provisions.* Any person who violates any other provision of this chapter, where no other fine is specifically provided, shall be subject to ~~public censure by the Board and/or a~~ fine of not less than \$500.00 and not more than ~~\$25,000.00~~ **\$25,000.00** for each offense.

[Comment: this is a significant change, with an important cascading effect. There have been a limited number – eight (8) – of completed ethics investigations turned over to the Board of Ethics by the IG in the nearly six (6) years in which the Board has had authority to adjudicate IG ethics investigations. We believe that increasing the fines would provide a greater incentive for people to comply with the Ordinance, and for complaints alleging ethics violations to be filed and investigated. In fact, Chicago’s fines for ethics violations are among the lowest of big cities: The Honolulu, Los Angeles, San Diego and San Francisco Ethics Commissions can impose fines of up to the greater of \$5,000

per violation or three times (3x) the amount of the financial benefit sought; the Cook County Board of Ethics can impose fines up to \$5,000; the Buffalo Board of Ethics can impose fines up to \$10,000 per violation; the New York City Conflicts of Interests Board can impose fines up to \$25,000 per violation (and up to \$30,000 for violations of the contribution restrictions to non-profit organizations affiliated with elected City officials); although we note that, like us, the Philadelphia Board of Ethics may impose a maximum fine of \$2,000 per ethics violation.]

(9) Candidates; filing of statements of financial interests. Any person who qualifies as a candidate for city office who knowingly files a false or misleading statement of financial interests shall be subject to fines as provided in subsection (a) (8) of this section.

[Comment: under current law, the Board cannot impose any penalty on a candidate who fails to timely file a Statement of Financial Interests or knowingly files a false or misleading statement, although the finding of a violation would be made public. This change would subject candidates to the same penalties as City officials and employees.]

2-156-505. Training and filing violations – Executive director’s authority.

Upon determining that a person has violated Section 2-156-145, 2-156-146, 2-156-190, 2-156-245, or 2-156-270, the executive director of the board is authorized to impose upon such person an appropriate fine as provided in Section 2-156-465. The executive director is authorized to impose or levy such fine no earlier than starting on the seventh city business day after the executive director sent notice to the person of the violation, and no fine shall begin accruing until the eighth calendar day after the executive director has sent notice to the person. The person may contest the imposition of such fine as provided by rule. The process set forth in Sections 2-156-385 and 2-156-392 are not a prerequisite to the imposition of fines pursuant to this section.

[Comment: this would codify the Board’s long-standing practice and interpretation of the Ordinance.]

SECTION 2. The Rules of Order and Procedure of the City Council, City of Chicago, are hereby amended as follows:

(Omitted sections are unaffected by this ordinance.)

RULE 14. Every member who shall be present when a question is stated from the Chair shall vote thereon, unless excused by the Council. Any member seeking to recuse from any matter other than as required by Sections 2-156-030 or -080 of the Municipal Code of Chicago shall: (i) as soon as practicable, file a written statement of recusal with the Board of Ethics, stating the reason(s) for the recusal and identifying the matter(s) from which the member intends to recuse, and the reason for such recusal; and (ii) disclose the recusal on the record of the meeting and abstain from participating in any discussion concerning or voting on the matter, but may be counted present for purposes of a quorum. The Board of Ethics shall post on its website all written statements made under this Rule as soon as practicable upon receiving them.

[Comment: this is a *critical* good government initiative. City Council members currently file two kinds of recusal notifications: (i) those filed with the Board of Ethics pursuant to §2-156-080(b); and (ii) and “Rule 14” disclosures, which are not required by law, and actually represent City Council members going above and beyond what the law requires. While the Board posts all required disclosures it receives immediately on receipt, these Rule 14 disclosures are not posted except in the Journal of

City Council Proceedings (unless they are also sent to the Board of Ethics, which posts all such disclosures received).

There are a host of reasons why City Council members recuse themselves from matters when not required to do so. For example, a personal friend's matter is being considered, or a nephew or other relative is an attorney representing one of the parties in the matter. It is important for the public and fellow City Council members to know about these recusals in a timely fashion. The Board is aware that some City Council members have expressed a fear that they could be (falsely) accused of having a large number of "conflicts of interests," and that calling attention to them via this change would, some argue, create the proverbial chilling effect and actually lead to fewer recusals, and that imposing additional disclosure requirements could lead to an increase in technical violations of the law. However, the Board's opinion is that this fear is outweighed by the fact that such voluntary recusals in reality show that City Council members are being conscientious and that making them public would actually increase the public's confidence in the integrity of City Council decisions.

The Board would create two sections of the website page that display aldermanic recusals: the first being for those recusals required by the Ordinance's conflicts of interests sections in §2-156-080; the second being these voluntary "supererogatory" recusals. Posting all City Council recusal disclosures should contribute to greater confidence in the objectivity of decisions made by the City Council and its committees. The Board of Ethics is the logical place for such disclosures to be posted.]

SECTION 3.

Chapter 2-56 of the Municipal Code of Chicago is hereby amended by inserting the underscored language, as follows:

(Omitted sections are unaffected by this ordinance.)

2-56-050 Conduct of city officers, employees and other entities.

(b) (1) Notwithstanding any other provision in this chapter to the contrary, if the office of the inspector general receives a complaint alleging a violation of Chapter 2-156 against any elected or appointed city officer, city employee or any other person subject to Chapter 2-156, the inspector general, after reviewing the complaint, may only: (i) decline to open an investigation if he determines that the complaint lacks foundation or does not relate to a violation of Chapter 2-156; or (ii) refer the matter to the appropriate authority if he determines that the potential violation is minor and can be resolved internally as a personnel matter; or (iii) open an investigation. The Board of Ethics shall promulgate, in consultation with the investigating authorities, rules setting forth the criteria to determine whether a potential violation of Chapter 2-156 is minor. The office of inspector general shall report to the Board of Ethics or, as due process may require, a member of its legal staff, from time to time, but no less frequently than twice each year, on all cases described in (i) and (ii) and (iii) above. and the reasons therefor. Such reports shall be confidential and shall not be disclosed by the inspector general or Board of Ethics, except that either may, without identifying the persons complained against or the specific transaction, comment publicly on such matters or public summary opinions to inform city personnel and the public about the interpretation of provisions of the Municipal Code of Chicago.

(3) The inspector general shall conclude his investigation of any violation of Chapter 2-156 under his jurisdiction no later than three ~~two~~ years from the date of initiating the investigation; provided, however, that any time period during which the person under investigation has taken affirmative action to conceal evidence or delay the investigation, shall not count towards the two-year period.

Notwithstanding any tolling or suspension of time applied, governmental ethics investigations by the inspector general under this Chapter are subject to an absolute four-year time limit from the date of initiation.

2-56-155 Statute of limitations on ethics investigations.

An investigation of any violation of Chapter 2-156 may not be initiated more than ~~three~~ two years after the most recent act of alleged misconduct.

[Comment: the idea behind these proposed changes to the IG's enabling legislation is to create greater coordination between the Board of Ethics and IG. First, as the Board has no authority to conduct factual investigations into alleged ethics ordinance violations – only the IG does – it is critical for the Board to understand the nature and facts of Ethics Ordinance complaints the IG has declined to investigate and the IG's rationale for such declinations, because there may be a reason for the Board to commence its own enforcement action. Such knowledge also enables the Board to give ethics advice that is fully consistent with the way the Ordinance is actually being enforced. Second, it is critical for the Board to understand which cases the IG deems "minor," and the disposition thereof, because the Board itself has the authority to determine that violations are minor, and uniformity is, of course, a fundamental element in the administration of equal justice under law. Third, it is also important that the Board be made aware of *ongoing* Ethics Ordinance investigations being conducted by the IG; such coordination will minimize the possibility that the Board's and IG's resources will be spent on IG investigations that end up in Board determinations that an Ethics Ordinance violation is "minor," or in a dismissal by the Board on substantive grounds, or on the grounds that the IG has failed to adhere to the time limit in which it must complete ethics investigations. Current law unfortunately requires no such coordination between the Board and the IG, and the IG is not required to and does not elaborate on those ethics cases it footnotes in its Quarterly Reports where it has declined to investigate, or has referred a matter to a department.]

This proposal would also enable the IG to complete its ethics investigations within three (3) years rather than two (2), and to commence ethics investigations where the last alleged bad act occurred not more than three (3) before the complaint, as opposed to two (2), which is current law. This in turn should enable the IG to deploy its ethics investigatory resources more effectively.]

SECTION 4. This ordinance is effective upon passage and publication, provided that §2-156-090(b) shall take effect on January 1, 2020.

[Comment: the Board recommends this delayed effective date so that City officials and employees who currently represent clients in the kinds of matters described in §2-156-090(b) have a reasonable time in which to refer ongoing matters to other attorneys and if necessary enter into formal activity- and fee-screening arrangements with their law partners and associates.]

Public Comments Presented to the Chicago Board of Ethics Regarding Changes to the Governmental Ethics Ordinance

Daniel P. Wolk

April 26, 2019

My name is Daniel Wolk. I am a University of Chicago trained social anthropologist. I have taught interdisciplinary social sciences at various universities and recently have dabbled in local journalism with City Bureau.

Whether deserved or not, the City of Chicago continues to suffer a notorious reputation as one of America's most corrupt cities. What is less well-known is that it enjoys some of the most professional governmental ethics code enforcement in the country. But I have noticed a curious discrepancy: for the last several decades, the public has perceived that real estate developers are the source of a big chunk of the political corruption in the City. Under the last two mayors, one frequently hears the charge that the big developers are the ones who "really" run the City. Yet, if I am not mistaken, cases concerning zoning and development seldom come up in the business of the Office of the Inspector General or the Board of Ethics — or at least they are grossly underrepresented.

It appears to me that there is a gaping loophole in the City's Governmental Ethics Ordinance that shields developers from coming under meaningful scrutiny in their dealings with City officials, both elected and not elected. Big developers, usually through their lawyers, spend an inordinate amount of time communicating and negotiating with Department of Planning and Development staff and local aldermen in order to push through their plans to develop land and properties in the City. They also pay dearly in the form of fees to the City.

But the money they pay in fees pales in comparison with what some of them pay lobbyists to help them push through their plans. They and their associates, such as lawyers and architects, have also been generous in their campaign contributions to mayoral candidates and to aldermen. Last December, the Chicago Tribune reported that between 2010 and 2018 architects alone had contributed more than \$180,000 to candidates, and their firms had contributed more than \$350,000 (<https://www.chicagotribune.com/business/ct-biz-architects-campaign-contributions-1209-story.html>). Surely developers and their lawyers contributed significantly more.

The reason, of course, that real estate developers spend so much money to facilitate the acceptance of their plans to build in Chicago is that they can expect to make stupendous

profits, especially when they build luxurious properties that cater to the affluent. And no matter how honest, upstanding and scrupulous at least some of them may be, the public is deeply wary of the process by which the City approves developers plans, and this contributes to the still deepening cynicism and distrust they feel towards government, as reflected in the very poor turnout in recent municipal elections.

So what can be done? I have a simple suggestion: expand the definition of “doing business” with the City to include big developers who work closely with the City. Here is the current definition of “doing business” with the City as it appears in §2-156-010 (h) of the Governmental Ethics Code:

“Doing business” means any one or any combination of sales, purchases, leases or contracts to, from or with the City or any City agency in an amount in excess of \$10,000.00 in any 12 consecutive months. [And] “Seeking to do business” means (1) taking any action within the past six months to obtain a contract or business from the city when, if such action were successful, it would result in the person’s doing business with the city; and (2) the contract or business sought has not been awarded to any person.

These definitions could be amended to include developers and their associates who seek or who have won approval for planned developments, or other zoning amendments, and earn profits of at least \$10,000,00, or expect to. I personally think the amount should be lower, say \$5 million, but that is not my point now. If the creation of a TIF zone is at stake, this in almost all cases surpasses the \$10 million threshold. The profits the developers make do not result from “doing business” with the City under the current definition, but they should be. The role the City plays in fostering these developments, including but not limited to (1) assurance of safety, (2) provision of infrastructure, (3) expertise in drafting the actual plans, and (4) drumming up community participation, is far greater than most people can imagine, and amounts to, in effect, a partnering relationship. Such partnership may differ considerably from other instances of doing business with the City, but should, nonetheless, come under that rubric.

The point is: *big developers that work closely with the City should face the same restrictions in making campaign contributions as do other entities “doing business” with the City, and City officials, both elected and non-elected, should take the same precautions to avoid conflicts of interest, or the appearance of such conflicts, in dealing with real estate developers as they do with other businesses.*

Today I have one other suggestion resulting from my observations on real estate development in Chicago. A case has surfaced in which a developer has paid a lobbyist exorbitant fees, \$270,000 over a three-year period, for the sole purpose of gaining approval for only two planned developments (actually only amendments to them). An activist group has filed a formal complaint through the Inspector General’s office regarding some suspicious aspects of this transaction and related activities.

I realize that there would be many pitfalls to limiting the dollar amounts that corporations pay lobbyists, and so I am not suggesting any such limits. But why cannot the Ethics Ordinance be amended to force closer examination of huge lobbyist fees, just as banks require extra documentation when customers deposit huge dollar amounts into their accounts? The point here is to protect against money-laundering when there are reasonable fears that an exorbitant fee is being paid so that it can “pass through” the lobbyist and result in dollars landing in the pockets of aldermen or other City officials.

Thank you for considering these suggestions, and I look forward to more detailed communications with you over these matters.