

To: The Honorable Carrie Austin, Chair,
City Council Budget and Government Operations Committee

From: Steven I. Berlin, Executive Director

Re: **OPENING STATEMENT/FISCAL YEAR 2017 BUDGET**

Date: October 26, 2017

Overview and Mission: Good afternoon, Chair Austin and Members of the City Council Committee on Budget and Government Operations. I thank you for the opportunity to address the Committee. Now in our 31st year, the Board of Ethics administers, interprets and enforces Chicago's Governmental Ethics Ordinance (the "Ordinance"). Under the leadership of Board members and the Executive Director, all appointed by Mayor Emanuel with City Council confirmation, the Board promotes integrity, transparency and accountability in City government through advisory, educational, enforcement, and regulatory programs.

Through our educational programs, we provide annual training for the entire City workforce, thereby raising awareness of ethics standards, and helping to foster good-willed and knowledgeable City workers and regulated and contractor communities. Through our guidance and casework program, we receive requests for and issue more than 4,800 confidential advisory opinions each year from and to individuals (most of them City employees and officials) on complying with the letter and spirit of the law and responsibly handling potential conflicts of interests. Through our enforcement program, we: (i) take regulatory action and issue notices of probable cause where information available to us indicates apparent violations of the Ordinance and no factual investigation is needed; (ii) refer complaints alleging violations for investigation to the City's Inspector General ("IG") or other investigative agencies as appropriate for factual investigation; (iii) dismiss, settle, or adjudicate ethics any investigations completed by the IG and all Board regulatory actions, making final, public determinations as to whether ethics violations occurred and assessing appropriate penalties; and (iv) enforce ethics training and filing requirements for lobbyists and City employees and officials, assess penalties, and/or issue recommendations for corrective action. Through our regulatory program, we foster transparency and accountability by making public thousands of disclosures and notices of recusal filed by City governmental personnel and lobbyists.

Highlights of 2017 Achievements, and 2018 goals:

1. **EDUCATION:** Educating person subject to the Ordinance is a critical responsibility, but one that receives scant attention when government ethics issues are discussed publicly. We offer the following programs:

◆ **Mandatory Annual On-line Ethics Training.** All lobbyists, aldermen and City employees and officials must complete one of several annual ethics training programs designed by the Board. We

administer and revise these programs every year and produce separate programs for lobbyists, aldermen and other City personnel. These are models nationwide – Chicago is one of a few jurisdictions requiring annual ethics education for all governmental personnel and lobbyists. With the assistance of Ethics Officers from every City department and aldermanic office, and under the Board’s administration, the City again achieved 100 percent (100%) compliance with the 2016 training requirements (31,211 completions). The Board determined that seven (7) employees and one alderman violated the Ordinance by failing to complete the training by the deadline, and assessed appropriate penalties.

To date, 25,825 City governmental personnel have completed the 2017 training (approximately 83% of the expected total). The deadline to complete the training is 11:59:59 pm on December 31, 2017.

In 2018, we will rewrite these programs and implement technical and visual enhancements. We cover different topics each year, depending on questions we receive, to make all trainings current. We regularly consult with sister agencies and other governmental ethics agencies around the country on creating effective training programs.

The steady and high numbers of lobbyists and City employees and officials seeking advice from us are makrs of the success of our educational programs.

◆ **Mandatory Annual Lobbyist Training.** All registered lobbyists – currently 796, an all-time record and a 30% increase over the number of registered lobbyists one year ago – must also complete annual training. For the 2016-2017 training year, we found 24 lobbyists in violation of the Ordinance for failing to complete the program on time, and assessed fines of \$250 per day, as required by law. Their names were made public, also as required by law. As we do every year, we will revise this training for the 2017-2018 training year.

◆ **Other Training.** We conduct about 40 face-to-face ethics training seminars annually for the approximately 10 percent (10%) of the City’s workforce who are required by law to attend ethics training every four years (City Council members and staff, Mayoral staff, and senior executive service employees). We also design and conduct other seminars upon request, for appointed officials, aldermanic offices, and executive branch departments. Since November 2016, more than 820 City employees and officials, contractors, and lobbyists have attended ethics classes. We also have designed and posted training programs for incoming and outgoing City employees and officials.

◆ **Educational Materials.** Our website includes the current and last five versions of the Ordinance, our Rules and Regulations (most recently revised as of January 2017), every formal advisory opinion issued by the Board since 1986 (891 at current count), indexed by subject matter and redacted to preserve confidentiality, a searchable index and summary of these opinions (which we add to as new opinions are issued), educational brochures and “Plain English” guides, and ongoing guides to all Board enforcement matters. In the past year, we revised all of our 22 guides, and added two (2) Plain English Guides, including a recent one advising City personnel wishing to work on upcoming state or County elections.

2. **CONFIDENTIAL GUIDANCE AND CASEWORK:** In my experience, the *most* effective way to prevent misconduct and foster a culture of ethics in government is to enable and encourage persons to seek *confidential* guidance and advice *before they act*. We are a trusted authority that provides this to City officials, employees and others subject to City ethics laws. We advise them on complying with both the

letter and spirit of these laws, and on handling potential conflicts of interests responsibly. This advisory function, when coupled with regular education, constitutes our most critical responsibility.

Since November 2016, we have issued more than 4,800 confidential advisory opinions: 3/4 (75%) of these to City governmental personnel (the department to whom the most opinions were issued was City Council). Seventeen percent (17%) were issued to lobbyists or potential lobbyists; the rest to attorneys, contractors, political committees or contributors. Note: members of the public or the media do *not* have standing to receive an advisory opinion unless they are personally involved in the specific situation.

In 2017 we have experienced unprecedented increases in requests for opinions concerning lobbying, political activity, and business travel (the Ordinance requires that third-party-paid travel receive advance Board approval).

We make formal advisory opinions available to the public, with confidential information removed. Every one of the 891 formal opinions issued by the Board since 1986 is posted on our website, with full text, indexed by subject matter. Informal advisory opinions do not become public, even in redacted form, although we use them for educational purposes, to notice trends and alert others about them where appropriate, and to give consistent advice.

Our work would be impossible without ethics officers from every City department and aldermanic office. They are our eyes and ears, referring their personnel with substantive questions and assisting us with required filings and educational requirements. We help them keep current with the law.

3. FINANCIAL DISCLOSURE: The Ordinance requires about ten percent (10%) of the City's workforce (including aldermen and many appointed officials; the criteria are no longer based on annual salary rate, but on job responsibilities) to file annual Statements of Financial Interests with us. We distribute, collect and make publicly available forms going back seven (7) years from the date of filing. Forms filed in 2011 and after are posted on our website (forms filed prior to that in our possession are available in paper format). Since 2011, filers can also complete and file their forms via a secure website; 85% file this way. Few government bodies enable their personnel to file online *and* make this information publicly available online. In 2017, we achieved record compliance with the filing requirements: The names and violations of those in violation were made public, as required by law.

4. REGULATION: The Ordinance requires all persons who lobby City personnel to register annually with us (there is a \$350 annual registration fee and \$75 client fee for each client after the first; we waive these fees for certain non-profits) and file quarterly activity reports. Filings provide detailed information about matters lobbied upon, lobbyists' clients, political contributions, and gifts offered. In 2017, the Board has to date collected \$444,700 in registration fees, about fifty-three percent (53%) of our 2017 budget allocation. When lobbying penalties are added in, the Board has collected 69% of its 2017 operating budget.

Shakman-exempt employees and Mayoral appointees must sign ethics pledges binding them to a two-year post-City service lobbying ban. We post a link to the complete list of pledgees. We also post hundreds of disclosures made by City personnel each year regarding business travel, gifts, and aldermanic recusals.

In 2017, we added enhancements to the lobbyist database, including a new search interface and a link to view and sort the full datasets made available through the Citywide data portal.

5. CAMPAIGN FINANCING: The Ordinance limits at \$1,500 the amount that registered lobbyists or persons doing or are seeking to do business with the City or its sister agencies can contribute in a calendar year to any elected City official or candidate for elected City office, or their political committees. At the Board's urging, in 2013 the Ordinance was amended to strengthen penalties for *both* those who make *and* accept excess contributions. The Ordinance requires that violators' names be made public. Under a September 2014 amendment, the Board reviews public reports of contributions, and lobbyists' disclosures, and refers potential violations to the IG. In 2017, the Board commenced nine (9) regulatory actions based on apparent violations. Three (3) involved excess contributions from affiliated entities seeking to do business with the City by being named as potential airport concessionaires, and three more were from (3) registered lobbyists, and were based on our review of these lobbyists' filed quarterly activity reports. The last three (3) were commenced on October 25, yesterday, involving a City vendor, based on information provided to us by another City department. The first six (6) matters were closed after the contributor provided evidence that there was a mistake in the recording of the contributions, or the excess amount contributed was refunded. We anticipate a similar result with the last three (3).

6. ENFORCEMENT: Since July 2013, far-reaching changes to the City's ethics laws and Board operations have been made in enforcement. Many were recommended by the Mayor's Ethics Reform Task Force and enacted to ensure that fairness and due process of law are guaranteed in all ethics investigations and post-investigation procedures.

◆ **Board Regulatory/Administrative Actions.** In 2017, under the leadership of our new Chair, William Conlon, the Board has found probable cause in cases where available evidence indicates that the Ordinance was violated, but no factual investigation by the IG is needed. After finding probable cause, the Board affords subjects the right (or the subject's attorney) to present written materials and/or evidence and arguments before the Board before the Board makes a final determination. In 2017, to date, the Board has commenced 34 such actions. Fifty percent (50%) of these matters were dismissed by the Board after these meetings. Where the Board finds, after hearing from the subject, that the Ordinance was violated, it may publicly settle these matters with the subject for fines or other remedies, or, if no settlement is reached, make its determinations public and impose appropriate fines. Final Board determinations are appealable to the Cook County Circuit Court.

Actions Involving Unregistered Lobbying. As was widely reported, the Board reviewed emails to the Mayor that were made public in December 2016, and commenced 28 regulatory actions involving potential unregistered lobbying (in one (1) case, the issue was unreported lobbying by an already-registered lobbyist). In 14 of these matters, the Board did not find probable cause, because the actions taken by persons emailing the Mayor did not amount to lobbying (*e.g.* they were one-time sales calls), or fell into an exemption (the person was acting on behalf of a non-profit organization but was not compensated for sending the email). In seven (7), the Board determined that there was probable cause to conclude that the individuals had engaged in unregistered lobbying, received written responses and/or met with the subjects and their attorneys, and made final determinations that there had been unregistered lobbying, assessing fines of: \$92,000 (to both the lobbyist and his client); \$1,000 (to the lobbyist but not his client); and four (4) fines of \$2,500 each (note: at the Board's October 25 meeting, it approved settlement agreements in three (3) of these cases. In another case, the individual settled the matter for a \$25,000 fine (the Board assessed his client a \$2,000 fine). In the remaining six (6) matters, the Board determined there was probable cause to conclude that the individuals had engaged in unregistered (or

unreported, in one (1) case) lobbying, but dismissed the matters after meeting with the subjects or their attorneys, and/or considering the written arguments and materials they submitted, and determining that the law was not violated.

Actions Involving Apparent Violations of the Campaign Contribution Laws. These were discussed above.

◆ **Ethics Adjudications.** Effective July 1, 2013, the Board became an adjudicative agency: we do not conduct factual investigations of complaints alleging ethics violation. We refer complaints requiring factual investigation to the IG, which may then investigate according to its own rules. After the IG completes an investigation of an Ordinance violation, the Board considers the IG’s final investigative report and supporting evidence, then either dismisses the matter or finds probable cause to believe that the Ordinance was violated. These findings are confidential, though the Board may comment on them without identifying the parties. If the Board finds probable cause, it may settle the case (settlements are public, and can involve discipline and/or fines), or the subject may “have his day in court” in a confidential evidentiary hearing before an administrative law judge (“ALJ”). At the conclusion of that hearing, the Board reviews the ALJ’s findings, and determines whether the subject violated the Ordinance. If the Board so determines, it assesses appropriate penalties. These Board determinations are appealable to the Circuit Court. The Board issues written public opinions on all matters that have gone to an evidentiary hearing. If the Board determines, after such a hearing, that the subject did not violate the Ordinance, it dismisses the matter and makes public comment without identifying the subject, unless the subject requests to be identified. A summary of every such matter is posted on our website, consistent with the Ordinance’s confidentiality requirements.

IG Investigations. Since November 2016, the IG has submitted two completed investigations to the Board, requesting probable cause findings, in late May 2017. In one, the Board settled the matter for a fine of \$1,500; the settlement agreement is posted on our website. In the other, the Board made a preliminary finding of probable cause; in December the subject and his attorney will meet with the Board to attempt to rebut that finding.

Legislative Inspector General (“LIG”) Investigations. The same procedures applied to investigations completed by the former LIG. A complete listing of all 50 matters submitted to the Board by the LIG between 2011 and 2015, with results, is posted on our website. Since November 2016, in one case – the last matter remaining for possible adjudication from the LIG’s investigations – the Board concluded (in 2014) that there was probable cause to believe that an alderman violated the Ordinance for failing to keep and make available timesheets for staff. After attempts to settle the matter failed, the matter went to a confidential merits hearing in July 2017. The Board agreed with the ALJ’s factual conclusions and settled the matter with the City Council member for a fine of \$5,000. That settlement agreement is posted on our website. No other pending LIG investigations remain.

Detailed information about all adjudications and enforcement matters is posted on our website and updated regularly. Our website also has a detailed guide to ethics enforcement procedures.

◆ **Enforcement Actions Regarding Training.** In February 2017 we determined that only seven (7) employees had not completed their 2016 ethics training by the December 31 deadline, and assessed no fines, because each completed the program during the grace period provided by law before fines can be

assessed. This is down from 32 violations and more than \$7,600 in fines in early 2016. We attribute this success to the diligence of our ethics officers in every City department and Ward Office. We posted all names of violators on our website, per the Ordinance.

◆ **Enforcement Actions Regarding Statements of Financial Interests.** In March 2017, 3,615 employees and officials were notified of their requirement to file 2017 Statements of Financial Interests. The deadline for filing was June 1, 2017. As noted above, we determined that 90 employees and officials violated the Ordinance for failing to file on time, and assessed fines against 13 of them, totaling more than \$3,200. Their names and violations were made public, as required by law. The Board works closely with ethics officers to reach our goal of zero (0) filing violations.

◆ **Enforcement Actions Regarding Lobbyist Registrations.** Lobbyists who fail to timely register or report are subject to fines and/or suspension of their registration; the City may cancel contracts awarded based on unregistered lobbying. The Board has aggressively enforced these registration requirements. Since November 2016, 136 lobbyists were determined to have violated the Ordinance for failure to timely re-register in January 2017, and six (6) for failing to file quarterly reports on time. As per the Ordinance, the names of all these lobbyists were posted on the Board's website.