

To: The Honorable Pat Dowell, Chair, Honorable Members
City Council Budget and Government Operations Committee

From: Steven I. Berlin, Executive Director

Re: **OPENING STATEMENT/FISCAL YEAR 2020 BUDGET**

Date: November 1, 2019

Overview and Mission: Good afternoon, Madame Chair Dowell and Members of the City Council Committee on Budget and Government Operations. I appreciate the opportunity to address you.

Now in our 33rd year, the Board of Ethics administers, interprets and enforces Chicago's Governmental Ethics Ordinance (the "Ordinance"). Under the leadership of our Board members and Executive Director, we promote integrity, transparency and accountability in City government by giving thousands of pieces of confidential advice each year, educating City employees and officials, vendors, lobbyists, and others subject to the Ordinance, regulating their conduct, and enforcing the Ordinance by adjudicating cases involving violations of the law.

Through our guidance and casework program, we receive requests for and issue more than 4,800 confidential advisory opinions yearly (the vast majority from City employees and officials) on complying with the letter and spirit of the City's ethics laws and responsibly handling potential conflicts of interests. Through our educational programs, we provide annual training for the entire City workforce, thereby raising awareness of ethics standards, promoting a workplace free from sexual harassment, and helping to foster knowledgeable City workers, lobbyists, and regulated communities. Through our enforcement program, we: (i) find probable cause to conclude that the Ordinance was violated where information available to us indicates apparent Ordinance violations and no factual investigation by the City's Inspector General ("IG") is needed; (ii) as appropriate, refer complaints alleging violations for factual investigation; (iii) dismiss, settle, or adjudicate ethics investigations completed by the IG, as well as all Board-generated enforcement actions, make final, public determinations as to whether violations occurred, and impose penalties as provided by law; and (iv) administer ethics training and filing requirements for lobbyists and City employees, officials, and candidates for City elected office, and assess penalties and/or issue recommendations for corrective action. Through our regulatory program, we foster transparency and accountability by making public thousands of disclosures filed by governmental personnel and lobbyists.

Highlights of 2019 Achievements, and 2020 goals:

1. **EDUCATION:** Educating persons subject to the Ordinance is a critical Board responsibility, which receives scant attention when government ethics issues are discussed publicly. We offer:

◆ **Mandatory Annual On-line Ethics Training.** All lobbyists and City officials and employees must complete an annual ethics training program that we design and administer. We revise the program every

year and produce separate programs for lobbyists, and City officials and employees. All include detailed information on sexual harassment: what it is, how to prevent it, and how to report it so those who engage in it are held accountable. 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 our administration, the City again achieved 100 percent (100%) compliance with the 2018 training requirements (32,553 completions). The Board determined that 17 employees (and zero (0) aldermen) violated the Ordinance by failing to complete the training by the deadline and assessed appropriate penalties.

We delayed implementation of the 2019 program so as to include and explain recent amendments made to the Ordinance by the City Council. We extended the deadline to complete it to on or before April 1, 2020. To date, 9,800 City governmental personnel (and two (2) aldermen) have completed the current program (approximately 20% of City government).

In 2020, we will rewrite these programs and implement technical and visual enhancements. We cover sexual harassment and gifts every year; other topics vary, though many are repeated periodically, such as political activity and post-employment/revolving door. We regularly consult with sister agencies and other governmental ethics agencies around the country on creating effective training programs.

The steadily high numbers of those seeking advice marks the success of our educational programs.

◆ **Mandatory Annual Lobbyist Training.** Registered lobbyists – currently 788 – must complete annual training. While not required by law, this training also includes a unit on preventing and reporting sexual harassment, as lobbyists have been reported as victims of this scourge in state capitals nationwide. In 2020, we will again offer this program, emphasizing sexual harassment, gifts and political contributions.

◆ **Other Training.** Since November 2018, we have conducted 41 face-to-face ethics training seminars for the approximately 12% of the City’s workforce required by law to attend ethics training every four years (City Council members and their 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 2018, more than 1,450 City employees and officials, contractors, and lobbyists, and members of the non-profit community (who may become lobbyists in 2020) have attended ethics classes. We also post training programs for incoming and outgoing City employees and officials. We are working with the Department of Procurement Services to enhance training for City vendors and persons seeking to be vendors.

◆ **Educational Materials.** Our website includes the current and last nine (9) versions of the Ordinance, our Rules and Regulations (most recently revised as of January 2017), the full text of every formal advisory opinion issued by the Board since 1986 (907 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), 29 educational brochures and “Plain English” guides, and ongoing guides to all Board enforcement matters, naming names as permitted by law. In the past year, we revised all publications, and added five (5) new guides, including one covering Aldermanic “Rule 14” and other recusals, another covering use of the official City seal, another covering the 2020 Ward Committeeman elections, and two (2) more covering the changes to the lobbying laws affecting non-profits in 2020. Also included are Board meeting minutes since 2005, and the Executive Director’s monthly reports on agency activity.

In addition, in 2020, we will continue to focus on public outreach and education and offer speakers at neighborhood meetings and aldermanic ward nights. In 2019 we have participated in four (4) of these.

◆ **2019 COGEL Conference Hosts.** I am proud that Chicago will host the 2019 annual conference of the Council on Governmental Ethics Laws (“COGEL”), in a few weeks, December 15-18. COGEL is the only professional organization devoted to bettering government ethics, campaign financing, lobbying and freedom of information laws, and election administration. Its 500+ members include government agencies in these disciplines from other large U.S. and Canadian cities, nearly all 50 states, Canadian provinces, and the relevant branches of both the U.S. and Canadian federal governments, including the Office of Government Ethics, Federal Election Commission, and House and Senate Ethics Offices. It also has international members from the U.K. Mexico, and Australia, reform groups, attorneys in private practice, private political law and compliance professionals, and academics. Our agency is an active member. I was elected COGEL’s President for a one-year term beginning on the last day of the Chicago conference. We will co-host this conference with our colleagues from the Illinois State Executive Ethics Commission, the Illinois State Board of Elections, and the Cook County Board of Ethics. Hosting entails small expenditures for photocopying, banners, logo design, and “swag” bags for attendees.

The 4-day conference will bring in 450 attendees and take place at the Michigan Avenue Marriott, when stores are stocked with holiday merchandise. We served on the program committee and helped assemble breakout sessions of interest to anyone who follows local or national politics.

2. CONFIDENTIAL GUIDANCE AND CASEWORK: In my 26+ years of experience with the Board, I have found that *the most* effective way to prevent misconduct and foster a culture of ethics in government is to enable and encourage persons to seek *confidential* ethics guidance and advice *before they act*. We are a trusted, neutral authority that provides this advice to City officials and employees in both branches, and to others subject to City ethics laws. We advise 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 2018, we have issued more than 4,835 confidential advisory opinions: 75% to City governmental personnel (besides the Chicago Police Department, the department to whom the next-highest number of opinions was issued was City Council, then the Mayor’s Office). 19% were issued to lobbyists or potential lobbyists, and the rest to attorneys, contractors, candidates for elected office, political committees and campaign 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.

As noted above, we make formal advisory opinions available to the public, in full text, with confidential information removed. They are posted by subject matter, with a searchable index summarizing their holdings and providing key words to facilitate searching. Informal advisory opinions do not become public, even in redacted form, though we use them for educational purposes and to notice trends and alert other departments about potential problems, 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 15% 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. Since 2011, filers can also complete and file their forms via a secure website; 87% file this way. Few government bodies enable their personnel to file online *and* make this information publicly available online. In 2019, we found 40 employees and officials in violation of the Ordinance for filing late, and made their names, violations, and fines public on our website, as required by law.

The Ordinance also requires persons who qualify as candidates for elected City office to file Statements of Financial Interests with us within five (5) days of so qualifying. During the recently concluded election cycle, we notified all newly declared candidates via certified and first-class mail of their filing requirements. All filed forms were posted on our website – more than 200. Candidates who do not file by the deadline stated in their notifications are subject to findings that they violated the Ordinance and fines. Board determinations are made public: two (1) aldermanic candidates were found in violation of the Ordinance; the Board settled one matter for a \$250 fine; the other candidate filed before the fine period began.

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 those who lobby on behalf of non-profits organized as 501(c)(3) organizations) and file quarterly activity reports. Filings provide detailed information about matters lobbied upon, lobbyists' clients, political contributions, and gifts offered. In 2019, the Board has to date collected \$439,350 in registration fees, about half our current budget allocation.

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 2019, in response to amendments passed by the City Council in late July 2019 that take effect on January 1, 2020, we have been conducting an extensive educational campaign with the non-profit community to inform them that all paid staff and employees who lobby on their behalf will be required to register as lobbyists beginning in 2020, though we will waive their fees.

5. CAMPAIGN FINANCING: The Ordinance limits at \$1,500 the amount that registered lobbyists or persons doing or 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. Since November 2018, the Board has commenced three (3) enforcement actions based on apparent violations, each involving excess contributions by persons doing business with the City. Each was closed by operation of law after the aldermen's' official candidate committees effected refunds of the excess amounts contributed.

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

◆ **Board-Generated Enforcement Actions.** Since early 2017, under the leadership of our 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 (and/or their attorneys) the right to present materials and/or evidence and arguments before the Board prior to when the Board makes a final determination. 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. Any final Board determination is appealable to the Cook County Circuit Court.

Since November 2018, the Board has handled twelve (12) such actions, (not including the three (3) campaign financing matters we closed), finding a minor, technical violation in two such cases, involving use of the City seal for political purposes, and violations in two (2) others, assessing a total of \$27,000 in fines. Four (4) of these matters remain ongoing.

◆ **Ethics Adjudications.** In 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 must either dismiss the matter or find probable cause to believe that the Ordinance was violated. These findings are confidential, though the Board may comment on them without identifying the parties. When the Board finds probable cause, it may settle the case (all 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, and assesses appropriate penalties. These Board determinations are appealable to the Circuit Court. (To date, there have been no such appeals.)

The Board issues written public opinions on matters that have gone to an evidentiary hearing. If the Board determines 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. Summaries of each such matter are posted on our website, consistent with the Ordinance's confidentiality requirements.

IG Investigations. Since November 2018, the IG has submitted two (2) completed investigations to the Board, requesting probable cause findings, and the Board concluded adjudicating three (3) submitted the prior year. In the first of these five, the Board determined, after meeting with the subjects, that they had committed minor, technical violations of the Ordinance's gift provisions. The second, submitted in September 2019, remains pending, the Board having determined that there is probable cause. In the first of the three (3) adjudicated cases, we found violations of the Ordinance's post-employment and retaining unregistered lobbyists provisions and assessed penalties of \$5,000. In the second, we found violations of the Ordinance's Financial Interest in City Business provision and assessed an \$8,000 fine. In the third, we found violations of the Ordinance's gift and Statement of Financial Interests provisions and assessed \$1,500 in fines.

Detailed information about adjudications and enforcement matters and a guide to ethics enforcement procedures are posted on our website and updated regularly. Names are named where permitted by law.

◆ **Enforcement Actions Regarding Training.** In January 2019 we determined that 17 employees had not completed their 2018 ethics training by the January 1 deadline, assessed \$2,834 in fines, and posted all names of violators on our website, per the Ordinance.

In July 2019, we found seven (7) lobbyists in violation of the Ordinance for failing to complete their training program before the July 2, 2019 deadline. We assessed no fines, as all completed their training before the statutorily mandated fine period began.

◆ **Enforcement Actions Regarding Statements of Financial Interests.** In March 2019, 3,715 employees and officials were notified of their requirement to file 2019 Statements of Financial Interests. The deadline for filing was June 1, 2019. As noted above, we determined that 40 employees and officials violated the Ordinance for failing to file on time and assessed fines as to three (3) of them, but two (2) are no longer with the City. The third settled the matter for a \$700 fine. Names of all violators were made public, as required by law. We work closely with ethics officers to reach our perennial 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. As is now well-known in the regulated community nationwide, the Board aggressively enforces these registration requirements. Since November 2018, 73 lobbyists were determined to have violated the Ordinance for failure to timely re-register in January 2019. Ten (10) of these failed to file by the time fines began accruing and eight (8) were assessed a total of \$20,431.42 in fines and costs; two (2) of them never re-registered or properly terminated, so their fines continue to accrue at \$1,000 per day. Should they ever attempt to re-register, they will need to settle their outstanding fines before the Board will allow that. Two (2) more were found in violation for failing to file quarterly reports on time, and both were assessed \$1,000/day in fines, which are ongoing. As per the Ordinance, the names of all these lobbyists and their fines are posted on the Board's website.