

# BOARD OF ETHICS

## Open Session Minutes

NOVEMBER 16, 2020, 3:04 P.M.

740 North Sedgwick, Suite 500

### **BOARD MEMBERS PRESENT**

William F. Conlon, Chair  
Zaid Abdul-Aleem  
Nancy C. Andrade  
Dr. Stephanie Cox-Batson  
David L. Daskal  
Hon. Barbara McDonald

### **STAFF PRESENT**

Steven I. Berlin, Executive Director  
Lisa S. Eilers, Deputy Director  
Richard Superfine, Legal Counsel  
Ana Collazo, Attorney/Investigator  
Edward Primer, Program Director  
Pully Casillas, Staff Assistant

### **BOARD MEMBERS ABSENT**

Dr. Daisy S. Lezama

### **GUESTS ATTENDING**

Alex Nitkin, Daily Line  
Heather Cherone, WTTW

*The meeting was convened and conducted through the use of the Zoom remote video and audio meeting platform.*

## **I. APPROVAL OF MINUTES**

The Board VOTED 5-0 (Nancy C. Andrade and Dr. Daisy S. Lezama, absent) to approve the open session minutes of the Board's meeting of October 19, 2020.

*Member Nancy C. Andrade joined the meeting at 3:09 p.m.*

## **II. CHAIR'S REPORT**

The Chair again thanked the staff for its diligence during the pandemic. He asked the Executive Director to summarize briefly the two pending lawsuits involving the Board: *Lee v. City of Chicago* and *Johnson v. City of Chicago*. The Executive Director explained that the City has moved to dismiss each lawsuit, the first on substantive legal grounds, and the second on standing grounds. Each motion is pending.

## **III. MEMBERS' REPORT**

None

## **IV. EXECUTIVE DIRECTOR'S REPORT**

### **A. Staffing during the Covid-19 Pandemic**

Except for me, staff members continue to work remotely for the most part, but all have come in from time to time to work on tasks that can be completed most efficiently in the office. I am fortunate to be able to come in every day.

**B. Amendments to the Ordinance**

1. On December 18, 2019, the City Council voted into law several amendments to the Governmental Ethics, which this Board played a role in drafting. These took effect on April 14, 2020, and prohibit City elected officials from acting as lobbyists on behalf of private clients before any other government unit in the State, or from receiving compensation or income from such lobbying by others, and prohibit elected officials from any other jurisdiction from acting as lobbyist on behalf of private clients before Chicago government. As was widely reported, after I testified before the City Council's Committee on Ethics and Government Oversight, that Committee unanimously voted down a proposed amendment submitted to City Council in April (which, due to City Council Rule 41, was granted a committee hearing on October 13) that would have effectively relaxed this latter prohibition by limiting the prohibition to elected officials from jurisdictions that have "pending or recurring legislative or contractual matters involving the City." The one affected lobbyist was notified that he must comply with the law, and did, on October 21, by resigning his elected position with a unit of local government elsewhere in Illinois.
2. Implementation of the non-profit lobbying provisions (also passed on July 24, 2019) was delayed to at least January 1, 2021. We continue to work with the Mayor's Office and members of the non-profit community on potential amendments.
3. There will be more discussion in closed session of potential actions relating to the procedures covering chapter 2-156 (Governmental Ethics Ordinance) investigations completed by the Office of Inspector General ("IG").

We have on our website a color-coded version of the Ordinance showing all changes made since January 2018. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/Ordinances/GEO-2019-color%20through%20June%202020.pdf>

**C. 2021 Budget**

On July 24, we submitted our 2021 budget request, which reflects a cut of \$9,031 in non-personnel costs, to offset the rise in personnel expenses in that amount. We were advised by the Budget Director that we will not suffer any layoffs, and had our virtual budget hearing on Friday, October 30.

**D. Education**

**Classes and other presentations**

We cancelled all classes from March 17 on. Of course, given the course of the pandemic, we are unsure when we will be able to resume but are working to come up with a plan to move to virtual classes. We have extended all training deadlines accordingly. All Board classes cover sexual harassment.

I am currently scheduled to give a 60-minute virtual training to the entire staff of the Department of Business Affairs and Consumer Protection on December 3.

### **On-line Training**

#### *For appointed officials*

To date, all but 45 appointed officials have completed the new annual training for appointed officials. We are not going to enforce deadlines for this year's training, due to the Covid-19 pandemic. We are grateful for the assistance of the Mayor's Office of Inter-governmental Affairs (IGA), which is responsible for coordinating the appointments of all Mayoral appointees/appointed officials.

#### *For all employees and aldermen*

All but 23 employees completed the 2019 program. For the 2020 program, 1,174 employees and one (1) alderman have completed it to date, and 50 employees are currently in progress. We extended the deadline to July 1, 2021, and, given Covid, may extend it further.

#### *For lobbyists*

To date, 273 lobbyists have completed the all-new annual on-line training, which is 32% of the total. Lobbyists will have until March 1, 2021 to complete it.

### **E. Council on Governmental Ethics Laws ("COGEL")**

As the President of COGEL, I can report that planning for the streamlined virtual conference in December continues. There will be two plenary sessions, and several videos of panel discussions. All will be offered free of charge to more than 600 COGEL members, including any Board members or staff of our office. The schedule is:

The following pre-recorded sessions will be approximately one hour long and will be available on-demand on the COGEL website throughout the month of December:

- Ethics Update (combined into one 60-minute session this year) (I and the Executive Director of the Ohio State Ethics Commission do this session every year)
- Elections Update
- Enforcement Update
- Campaign Finance Update (combined into one 60-minute session this year)
- Lobbying Update
- FOI Session
- Professional Development Session (Communication and Diversity)

The live COGEL sessions this year are as follows:

December 1, 2020 3:00 PM ET

**President Welcome / Plenary Session**

December 8, 2020 3:00 PM ET

**Annual Business Meeting**

December 15, 2020 3:00 PM ET

**Awards Presentation / Networking Event / 2021 Conference Announcement**

**F. Sister Agency Ethics Officers/Lobbying Assistance to CPS**

The next meeting of the ethics officers from the other local governmental agencies will be in January: these are our colleagues from the Cook County Board of Ethics, Chicago Public Schools, Chicago Park District, Chicago Transit Authority, City Colleges of Chicago, the Cook County Assessor's Office, and Chicago Housing Authority).

Please note that we are in talks with the Chicago Public Schools to assist them in implementing a lobbying policy. We are currently beginning talks with our colleagues at the Chicago Public Schools to modify our ELF program to include lobbyists registered with the CPS.

**G. Chicago Casino, the Board's Work per the Illinois Gambling Act**

As was reported in the media, on October 25, 11 firms responded to the City's RFI (request for information) regarding interest in placing and operating a casino in Chicago. This has triggered reporting requirements, to the Illinois Gaming Board, of City employees and officials who have "communications" with "applicants" regarding "gaming" under the Illinois Gambling Act, 230 ILCS 10/1 et seq. Further, once a casino operator is identified, other requirements under the substantive ethics provisions of that state statute will take effect. Penalties for violating this law are severe: it is a Class 4 Felony under Illinois law, subjecting the violator to fines up to \$25,000 and 1-3 years in jail.

Board staff has been working closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City officials and employees are informed of these reporting (and eventually, substantive ethics) requirements and prohibitions. There have been multiple briefings with City Council members and their senior staff. Later briefings with City departments and boards and commissions that explain these laws and requirements may occur in 2021.

**H. Advisory Opinions**

Since the Board's last meeting on October 19, we have issued 294 informal advisory opinions. The leading categories for informal opinions were, in descending order: Lobbying; Gifts; City Property; Post-employment; Political Activity; and Campaign Financing.

The leading City departments from which requesters came in this period were, in descending order: City Council; Mayor's Office; Department of Law; Police Department/Civilian Office of Police Accountability (COPA); and Department of Streets & Sanitation.

Informal opinions are not made public but are logged, kept, and used for training and future advisory purposes. (This same practice occurs with our colleagues at the New York City Conflicts of Interest Board, who issue roughly the same number of informal opinions.) They form the basis for much of our annual and periodic educational programs. Formal opinions are made public, in full text, with names and other identifying information redacted out.

I would like to note also that the office has seen a marked increase in inquiries from citizens since the beginning of the pandemic. Some of these result in complaints, which we then refer to the Office of Inspector General. We do not have authority to issue advisory opinions to members of the public unless they are personally involved in the specific situation about which they inquire.

**I. Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions**

Every formal Board opinion issued since 1986 is posted on the Board's website (more than 910), redacted in accordance with the Ordinance's confidentiality provisions. Redacted opinions are posted once issued by or reported to the Board. Summaries and keywords for each of these opinions are available on the Board's searchable index of opinions. Only a handful of other ethics agencies have comparable research tools.

We are unaware of jurisdictions that make their informal opinions public—though others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement.

**J. Waivers**

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted seven (7) and denied two (2). By law, we make all granted waivers public on our website

**K. Summary Index of Board-Initiated Regulatory Actions/Adjudications/pre-2013 Investigations**

We post the summary index of all investigations, enforcement and regulatory actions undertaken by the Board since its inception in 1986 (other than those for violations of filing or training requirements or campaign financing matters). It includes an ongoing summary of all regulatory actions the Board undertook without an IG investigation.

The Board makes public the names of all violators and penalties it assesses where authorized by law to do so. There have been, to date, 126 such matters (including one (1) on today's agenda. But only in those that occurred after July 1, 2013 can the Board release the names of those found to have violated the Governmental Ethics Ordinance. Since July 1, 2013, alone, there have been 54 such matters.

**L. Summary Index of Ongoing IG/LIG Investigations/Adjudications**

There are currently no completed IG investigations awaiting adjudication.

We post and continually update, on our website, an ongoing investigative record showing the status of every completed investigative report brought to the Board by both the IG (a total of eleven since July 1, 2013 and the former Office of the Legislative Inspector General ("LIG"), since January 1, 2012, and the status of all 50 petitions to commence investigations presented to the Board by the LIG. We update it as appropriate, consistent with the Ordinance's confidentiality provisions.

Whenever the IG presents the Board with a completed ethics investigation in which the IG believes there have been violations of the Governmental Ethics Ordinance, the procedure that follows is governed by §2-156-385(3) and (4) of the Ordinance: the Board reviews the IG's report, recommendations, and the entirety of the evidence submitted in its completed ethics investigation, including a review to ensure that the IG conformed with the requirement that it completed ethics investigations within two (2) years of commencing them (unless there is evidence that the subject took affirmative action to conceal evidence or delay the investigation), and that ethics investigations were commenced within five (5) years of the last alleged act of misconduct.

Then, if the Board finds that the evidence presented warrants a *prima facie* finding of probable cause to believe the subject violated the Ordinance, it notifies the subject of the allegations and affords the subject the opportunity to present written submissions and meet with the Board, together with an attorney or other representative present. The Ordinance provides that this meeting is *ex parte* – no one from the City’s Law Department or IG is present. Note that the Board may request clarification from the IG as to any evidence adduced in its investigation before making a probable cause finding (and indeed has done so). The Board cannot administer oaths at this meeting but can and does assess the subject’s credibility and the validity and weight of any evidence the subject provides.

If the subject is unable to rebut the Board’s *prima facie* probable cause finding, the Board may enter into a settlement agreement – all settlement agreements are made public – or the Board or subject may decide to proceed to a merits hearing that is not open to the public. That hearing would be held before an administrative law judge (ALJ) appointed by the Department of Administrative Hearings. The City would be represented by the Law Department (or a specially hired Assistant Corporation Counsel for that purpose), and the subject by his or her attorney. At the conclusion of the hearing, the ALJ submits his or her findings of fact and law to the Board, which can accept or reject them, based solely on the written record of the hearing. The Board will then issue a public opinion in which it finds one or more violations of the Ethics Ordinance (or finds none) and impose appropriate fines.

This process may seem cumbersome. However, it was added to the Ordinance and became effective on July 1, 2013, based on specific recommendations of former Mayor Emanuel’s Ethics Reform Task Force in Part II of its 2012 Report – the primary purposes being (i): to guarantee due process for all those investigated by the IG (or former LIG); (ii) to ensure that **only** the Board of Ethics could make determinations as to whether a person investigated by the IG or LIG violated the Ordinance, given the Board’s extensive jurisprudence and unique expertise in ethics matters; and (iii) to balance due process for those investigated by the IG with an accurate and precise adjudication by the Board of Ethics and the public’s right to know of ethics violations.

On our website, we have a publication that describes this process in detail: <https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/EnforceProcedures.pdf>

Note: the fines range from \$500-\$2,000 per violation for non-lobbying law violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for violations occurring after that.

Please note finally that, in all matters adjudicated or settled on or after July 1, 2013, the Board makes public the names of all violators and penalties assessed, or a complete copy of the settlement agreement.

## **M. Disclosures of Past Violations**

July 2013 amendments to the Ordinance provide that, when a person seeks advice from the Board about past conduct, and discloses to the Board facts leading it to conclude that he or she committed a past violation of the Ordinance, the Board must determine whether that violation was minor or non-minor. If it was minor, the Board, by law, sends the person a confidential letter of admonition. If it was non-minor, then, under current law, the person is advised that he or she may self-report to the IG or, if he or she fails to do so within two (2) weeks, the Board must make that report.

Since the time this provision (§2-156-070(b)) became effective on July 1, 2013, the Board has advised three (3) aldermen, two (2) aldermanic staffers, two (1) mid-level City employees, one (1) department head and one (1) former department head that their past conduct violated the Ordinance. In three (3) of these cases, one (1) involving an alderman, the second an aldermanic staffer, and the third a former

department head, the Board concluded that the apparent violations were not minor or technical, and the aldermen and aldermanic staff self-reported to the former LIG, and the former department head self-reported to the IG. Since the time that all matters involving the former LIG were consolidated with the IG, the IG has informed us that it has no record that the LIG ever commenced an investigation in the matter involving the alderman, and that the matter involving the aldermanic staff was closed, apparently without further investigation by the LIG.

In the four (4) cases in which the Board determined that minor violations had occurred, the Board sent confidential letters of admonition, as required by Ordinance

#### **N. City Council Handbook**

The project of completing a handbook for the operations of aldermanic offices has been resurrected. We updated the content for which we are responsible and submitted it this week. We do not know when the final product will be released, or which aldermen will shepherd it. Previously, the role of shepherding this work fell with former 40<sup>th</sup> Ward Alderman Patrick O'Connor

#### **O. Litigation**

Lee v. City of Chicago. On June 26, the City was served with a lawsuit, filed in Cook County Circuit Court, Chancery Division, by a former City employee of the Civilian Office of Police Accountability (COPA). The case is *Jason W. Lee v. City of Chicago*, 2020 CH 04524. The plaintiff left City employment on February 28, 2020 and works as an attorney for the Policemen's Benevolent and Protective Association. His suit alleges that the post-employment provisions of the Ordinance are unconstitutionally vague, and that the City is improperly attempting to regulate the practice of law by Illinois attorneys. It asked for a declaratory judgment and permanent injunction prohibiting the City from enforcing these restrictions against him. After the matter was briefed by both sides, on July 31, the Honorable Anna Demacopoulos denied the plaintiff's request for a temporary restraining order. The plaintiff was granted leave to file an amended complaint, and filed one, adding an as-applied constitutional challenge. The City has filed its brief to dismiss the entire matter, and we await plaintiff's responsive brief and oral argument on the City's motion.

Johnson v. City of Chicago. On October 14, an elected member of the Library Board of Wilmette (a "unit of local government" in Illinois), sued the City in U.S. District Court. The case is *Dan Johnson v. City of Chicago*, No. 1:20-cv-06119. The plaintiff asks the court for a preliminary injunction preventing the City from enforcing the "cross-lobbying" ban, §2-156-309, on the basis that it violates his rights of free speech and association under the First Amendment of the U.S. Constitution. The City has moved to dismiss the suit on the basis that the plaintiff has no standing and has filed its brief in response to the motion for a preliminary injunction. The case is assigned to Judge John Robert Blakey and Magistrate Judge Sheila Finnegan.

#### **P. Lobbyists-regulation and Enforcement**

To date for 2020, there are 850 registered lobbyists – another all-time high – and we have collected \$427,000 in lobbying registration fees. This represents ~48% of our budget request for 2021.

Q3 activity reports were due by October 20, 2020. To date all but 11 lobbyists filed them. As required by law, we will give those 11 lobbyists notice of their lateness and proper due process, and if they fail to file by the final deadline specified in the law, will fine them \$1,000 per day until they file.

**Q. Freedom of Information Act**

Since the last Board meeting, the Board has received one (1) new request for records. This was for all records of email and/or telephonic communications between the Board, a lobbyist and others in City government with respect to the “cross-lobbying” ban, §2-156-309. On November 6, several hundred pages of records were located and provided to the requestor, a reporter with the Chicago Tribune.

**V. PUBLIC COMMENTS**

None

**VI. OLD BUSINESS**

1. Status after Sending Formal Notifications and Recommendations to City Officials based on Communications from the Office of Inspector General to the Board and Others

The Board deferred discussion of this matter until Executive Session.

**VII. NEW BUSINESS**

2. Status of Ongoing Litigation Involving provisions of the Governmental Ethics Ordinance
3. Semi-Annual Review of Confidentiality of Executive Session Minutes under the Illinois Open Meetings Act
4. Approval of Schedule of Board of Ethics Meetings in 2021

The Board deferred discussion of these matters until Executive Session.

At 3:19 p.m., the Board VOTED 6-0 (Dr. Daisy S. Lezama, absent) to adjourn into Executive Session under: (i) 5 ILCS 120/2(c)(1) to discuss the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity. However, a meeting to consider an increase in compensation to a specific employee of a public body that is subject to the Local Government Wage Increase Transparency Act may not be closed and shall be open to the public and posted and held in accordance with this Act; (ii) 5 ILCS 120/2(c)(4) to hear and discuss evidence or testimony in closed hearing as specifically authorized pursuant to Governmental Ethics Ordinance Sections 2-156-385 and -392, and the Board’s Rules and Regulations, as amended, effective January 5, 2017, presented to a quasi-adjudicative body, as defined in the Illinois Open Meetings Act, provided that the body prepares and makes available for public inspection a written decision setting forth its determinative reasoning; and (iii) 5 ILCS 120/2(c)(21) to discuss minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06.

*Members of the public were asked to leave the Executive Session of the meeting and advised they would be invited into the reconvened Open Session of the meeting.*



*At 4:30 the Board VOTED 5-0 (Dr. Stephanie Cox-Batson and Dr. Daisy S. Lezama, absent) to reconvene in Open Session. The member of the public was invited to rejoin the Open Session.*

## **MATTER CONSIDERED BY THE BOARD IN EXECUTIVE SESSION**

### **I. APPROVAL OF THE EXECUTIVE SESSION MINUTES**

The Board confirmed its discussion in Executive Session, VOTING 6-0 (Dr. Daisy S. Lezama, absent) in Open Session, to approve the Executive Session minutes of the October 19, 2020 meeting.

### **II. NEW BUSINESS**

1. **Semi-Annual Review of Confidentiality of Executive Session Minutes under the Illinois Open Meetings Act**

The Board VOTED 6-0 (Dr. Daisy S. Lezama, absent) to continue the confidentiality of the Board's Executive Session Minutes pursuant to its review under the Illinois Open Meetings Act.

2. **Approval of Schedule of Board of Ethics Meetings in 2021**

The Board VOTED 6-0 (Dr. Daisy S. Lezama, absent) to adopt the proposed default schedule of monthly meetings of the Board of Ethics in **2021** and approve its publication.

January 11, Monday	April 12, Monday	July 12, Monday	October 18, Monday
February 8, Monday	May 10, Monday	August 16, Monday	November 15, Monday
March 15, Monday	June 14, Monday	September 13, Monday	December 13, Monday

All meetings will be held at 3:00 p.m. at the Board of Ethics, 740 North Sedgwick, Suite 500, Chicago, Illinois 60654.

### **III. CASEWORK**

A. **Status Report on cases after the Board Made Probable Cause Findings re Violations of §2-156-445(a) of the Governmental Ethics Ordinance Based upon Publicly Available Documents**

1. **Case Nos. 20026.CF.1 and 20026.CF.2, Campaign Financing**

The Board acknowledged its consideration of staff's status reports.

B. **Advisory Opinion**

2. **Case No. 20029.A, City-owned property**

The Board VOTED 6-0 (Dr. Daisy S. Lezama, absent) to defer further consideration of a draft advisory opinion regarding the unauthorized use of City-owned property by a City employee or official until the December meeting.

**C. Dismissed and Referred Complaints**

3. Case No. 20031.C, No Jurisdiction
4. Case No. 20032.C, No Jurisdiction
- 5, 6. Case Nos. 20033.C.1 and C.2, No Jurisdiction
7. Case No. 20034.C, No Jurisdiction
8. Case No. 20035.C, Prohibited Political Activity

The Board acknowledged that it heard and considered staff's reports on these complaints, all of which were referred to the Office of Inspector General.

**E. Consideration by the Board to Make a Probable Cause Finding Based Upon Publicly Available Documents re Possible Violation of §2-156-020 of the Governmental Ethics Ordinance**

9. Case No. 20036.C, Fiduciary Duty

The Board VOTED 6-0 (Dr. Daisy S. Lezama, absent) to determine there is probable cause to conclude that an Alderman, who is also a licensed Illinois Attorney, may have violated the Ordinance's Fiduciary Duty provision, §2-156-020, by representing a client, as an attorney, who is a defendant in a case pending in Cook County Criminal Court. The determination was based on publicly available documents, including the Alderman's appearance form as an attorney, and on the Board's advisory opinion and denial of a request to reconsider and change that opinion, in Case No. 19027.A. The Board also voted (by the same vote) to notify the Alderman of the opportunity to rebut the Board's determination, at its December 2020 meeting. The Board also clarified that its probable cause determination applies only to cases in which the Alderman began representing defendants after October 29, 2019.

Should the Board make a final determination of a violation, it could impose fines up to \$5,000 per violation. The Alderman could then appeal the determination to the Cook County Circuit Court.

*At 4:49 p.m., the Board VOTED 6-0 (Dr. Daisy S. Lezama, absent) to adjourn the meeting.*