

BOARD OF ETHICS
OPEN SESSION MINUTES
MEETING OF JANUARY 23, 2023- 3:01 P.M.
740 North Sedgwick, Suite 500

BOARD MEMBERS PRESENT

William F. Conlon, Chair
Ryan Cortazar
Norma Manjarrez
David L. Daskal
Hon. Barbara McDonald

STAFF PRESENT

Steven I. Berlin, Executive Director
Lisa S. Eilers, Deputy Director
Richard J. Superfine, Legal Counsel
Jef Johnson, Special Project Coordinator
Pally Casillas, Staff Assistant

BOARD MEMBER ABSENT

Dr. Stephanie Cox-Batson

GUESTS ATTENDING

“A”	Media Manage NBC Telemundo
Amaso19	Chris Norborg, Office of Inspector General
Jake Briggs	Tim Novak, Sun-Times (reconvened open session only)
Heather Cherone, WTTW	Mauricio Pena, Chalkbeat
Ana Collazo, Chicago City Colleges Inspector General	Joe Ptasinski, CPS Inspector General
Jennifer Chan, CPS	A.D. Quiq, Chicago Tribune
Pete Czosnyka, Citizen	Brad Snyder, Office of Inspector General
Fox 32	Fran Spielman, Sun-Times
Marcus Gilmer, Crain’s	Phil Swibinski
Christina Guarisco, CPS Inspector General	Tessa Weinberg, WBEZ
Ashlee Hall, NBC	Deborah Witzburg, Office of Inspector General
Erin Hagerty, The Daily Line	WGN-TV News Cntr.
Dan Kraemer, WBBM Channel 2	WLS-TV- ABC7
Justin Lawrence, Crain’s	Bryan Zarou, Better Government Association
George Lauder, Office of Inspector General	

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 (Dr. Stephanie Cox-Batson, absent) to approve the Open Session Minutes of the December 12, 2022 meeting.

II. CHAIR’S REPORT

The Chair again thanked the staff for its efforts during the pandemic, and through this election season so far. He also explained that the Board receives many complaints, the vast majority of which require factual investigations, typically by the City’s Inspector General (“IG”) where no factual investigation is required, the Board may proceed with enforcement proceedings in accordance with §2-156-390 of the ordinance.

III. MEMBERS' REPORTS

One of the members of the Board commented that the Executive Director's Report would be on the Board's Twitter® account.

IV. EXECUTIVE DIRECTOR'S REPORT

The Executive Director commented that: (i) his report is now posted on the Board's website, and has been tweeted out; (ii) the Board has received a record number of citizen complaints over the past few months, nearly all election-related, some of which are on today's agenda; (iii) the office is working through the list of those employees and officials who did not complete the 2022 mandatory online ethics training by the deadline, but this work has been delayed because many records available to the Board still show employees and officials who have left City service in the past two years, and staff must cull out those individuals; and (iv) the deadline for lobbyists to re-register or terminate and file 4th Quarter Activity Reports was before January 21, and that a current list of 625 registered lobbyists and their clients has been posted, but this list will change very soon.

A. Education

On-line Training

For all employees and officials

The deadline for all City employees and officials to complete the mandatory 2022 on-line ethics program was before January 1, 2023. As required by law, we sent out 387 Notices of Probable Cause on January 11, informing non-trainers that they had until January 18 to let us know why they were unable to complete the mandatory on line 2022 ethics training program before the deadline, and that if they do not complete the training before tomorrow, January 24, they will be subject to fines of \$250 per day until they complete it. As of today, there remain ~139 employees and five (5) appointed officials who have not completed the 2022 mandatory online training program. Those who completed the training prior to the imposition of fines will be found in violation of the Ordinance, but will be assessed no fines. We will post all violators names and their fines, where assessed, in the next week or so. To date we have dismissed 59 of these cases, because the subjects are no longer in City service, presented a valid excuse for not completing the training, or had actually completed it already. Note that about 140 employees began their City service on or after November 1, 2022, and we extended the deadline for them to complete the training to February 1, 2023 before they would be found in violation and subject to fines.

Our enforcement efforts were delayed because there are several departments whose personnel databases were not up to date, and it took staff days to cull out names of employees who had left City service prior to December 31, 2022.

We are grateful to our colleagues at the Department of Human Resources for their invaluable assistance in migrating the training programs to the City's e-learning management platform, as well as assisting us with the sexual harassment portions of each year's training program. The migration enables users to take the training from any computer, including their home computers, and also saves the City \$5,000 in annual software licensing fees. Previous training programs were intentionally designed to be taken only from City computers, for security reasons.

For lobbyists

We intend to post the all-new 2022-2023 lobbyist training late this week or early next week. The deadline for completing it is before July 1, 2023.

Classes and Other Presentations

We cancelled all in-person classes from March 2020 on, given the course of the pandemic. We are extending all training deadlines accordingly. All Board classes and educational programs cover sexual harassment. We will resume these classes as soon as it's feasible to do so.

On December 16, we presented to incoming laborers from the Department of Streets & Sanitation. On February 16, 2023, we will conduct a class for the Department of Aviation, and on February 22, we will conduct a review class for Mayor's Office personnel.

B. Advisory Opinions

Since the Board's last meeting, we have issued 393 informal advisory opinions—a very busy period. The leading categories for informal opinions were, in descending order: Political Activity; Campaign Financing; Gifts; Travel; Statements of Financial Interests; Lobbying; and Post-employment. The focus on political activity is expected, as the Consolidated Municipal Elections approach.

The leading City departments from which requesters came in this period were, in descending order: City Council; Police Department/Civilian Office of Police Accountability (COPA)/Community Commission for Public Safety and Accountability (CCPSA); Mayor's Office; Department of Law; Department of Finance; Department of Public Health; Department of Assets, Information, and Services; and Office of Inspector General ("IG"). As is typical, about 80% of these inquiries came from City employees or elected officials, another 10% from lobbyists or potential lobbyists, and the rest from attorneys, vendors, candidates for elected City office, or campaign contributors.

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.

In the past five (5) years, the Board has issued 67 formal opinions. There is a draft opinion on today's agenda, to be discussed in Executive Session.

C. Citizen Complaints

Since the last Board meeting, the Board has received a record number of complaints from citizens and others. All but one (1) of these are election-related, involving allegations of prohibited political activity or politically/election-related misuse of City property. The Board can do one of three (3) things with such complaints: (i) the vast majority are referred to the IG because they require a factual investigation; (ii) some can be dismissed outright, and, where appropriate or feasible, we direct the complainant to the correct entity to address their complaint; or (iii) if the complaint needs no further investigation, and

appears to state a *prima facie* violation of the Governmental Ethics Ordinance, the Board can consider or issue a 10-day notice to the subject that the Board intends to make a probable cause finding, per §2-156-390, which took effect October 1, 2022.

D. Summary Index of Formal Advisory Opinions/Text of all Formal Advisory Opinions

The full text of every formal Board opinion issued since 1986 is posted on the Board’s website (more than 920), redacted in accordance with the Ordinance’s confidentiality provisions, here: https://www.chicago.gov/city/en/depts/ethics/auto_generated/reg_archives.html.

Redacted formal opinions are posted once issued or approved by the Board. Summaries and keywords for each of these opinions—and a link to each opinion’s text, which we added since the August Board meeting—are available on the Board’s searchable index of opinions, here: <https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/AOindex.docx>.

Only a few 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.

E. 2023 Statements of Financial Interests

On February 28/March 1, as required by law, we will notify ~3,700 City employees and officials required to file 2023 Statements of Financial Interests (“FIS forms”) of their requirement to file and will provide the link to file electronically. We are sending out spreadsheets to all departments and Ward offices and City Council Committees with last year’s filers and asking them to update their lists for 2023.

F. Statements of Financial Interests filed by Candidates for Elected City Office

The Ordinance requires that all candidates for elected City office file a Statement within five (5) days of qualifying as a candidate. This includes all candidates for the newly created offices of District Police Councils (up to 66 positions). Note that all currently serving elected officials running for re-election or for different offices from those they currently hold have filed. As soon as staff learns of new candidates, we inform them via certified and first-class mail of their filing requirement. We post all candidates’ forms on our website upon receipt, at this link: https://www.chicago.gov/content/city/en/depts/ethics/supp_info/CandidateFIS2023.html

There remain seven (7) candidates who have still not filed, and there will be more on them in Closed Session.

All current employees or officials who have already filed in 2022 and who are candidates have their forms posted here: <https://webapps1.chicago.gov/efis/search>

G. Lobbyists Filings

All lobbyists registered at the end of 2022 were required to re-register or terminate their registrations before January 21, and file their 4th Quarter activity reports. At this time, 625 lobbyists have registered for

2023, and we have collected \$266,375 in registration fees. Those figures are sure to rise--staff is still processing filings. We have posted a current list of all registered lobbyists and their clients, here: <https://www.chicago.gov/content/dam/city/depts/ethics/general/LobbyistStuff/LISTS/LobbyistList.xls>

Those who missed the deadline will be contacted by first class, certified, and email, and we will notify them that they must re-register or terminate within seven (7) days of the notice, otherwise they will be found in violation of law, fined \$1,000 per day until they do so, and their names and fines made public.

H. Lobbying Law Revisions

This morning we met with representatives from the Mayor's Office and philanthropic and public charity communities to discuss potential amendments to the lobbying laws as to registration by individuals who engage in lobbying on behalf of non-profit organizations. The current thinking is to include activity and/or compensation thresholds, such that individuals would be required to register once they lobby a specified number of hours in a calendar quarter and/or are compensated a specified amount or more for lobbying in a calendar quarter. Note that: 1) this is precisely how peer cities like New York, Philadelphia, and Los Angeles regulate lobbying on behalf of non-profits and others; and 2) as in those cities, it will require personnel who lobby to keep time records, and make reasonable calculations as to their hours and compensation (as many are not compensated explicitly for lobbying, unlike for-profit contract lobbyists).

I. Update of Vendor Database

As required by law, the City's Department of Assets, Information and Services ("AIS") maintains a database of persons/entities that are doing and have done business with the City (as that term is defined in the Ordinance) going back about eight (8) years, to aid political committees and candidates who receive political contributions in excess of \$1,500. That database was first developed in 1998. For the past few months, we have worked closely with the Mayor's Office, AIS, the Department of Finance, and the Department of Procurement Services to improve that database, and soon will be meeting with the City's sister agencies to assist them in making their lists of persons that have done business with them available and easy-to-use. The Ordinance provides that any person who relies on this list is not in violation of the Ordinance's contribution restrictions if the purported violation relates to the identity of the contributor.

A new, improved database of persons who have done business with the City is being posted this week.

J. Personnel Rules Revisions

In conjunction with the Mayor's Office, Departments of Human Resources, Law, Buildings, Business Affairs and Consumer Protection, and others, we worked on updating the City Personnel Rules, which were last revised in 2014. In particular, we are assisting on revisions to Rule XXIX, entitled "Conflict of Interest," with respect to: (i) conforming the Rules to the current version of the Governmental Ethics Ordinance; and (ii) expanding that Rule to prohibit City employees from making certain recommendations as to the hiring of other City employees and to recommending vendors or tradespeople to persons who are subject to inspections, permit reviews, etc.

K. Department Consultations

In the last year, we assisted the Department of Streets & Sanitation in revising its conflicts of interests policies with respect to recommending outside businesses to residents, at the request of the Mayor's Office and the Department's Commissioner. We also are still working with the Commission on Human Relations to formulate a policy governing its employees' service on non-profit and other boards. We also consulted with the Budget Office as to applicable ethics restrictions on the new Community Microgrants Program. And, at the Mayor's directive, we issued an ethics guide to evaluating and awarding CRP grants and contracts and as mentioned above, have offered each department a training session on the ethics guidelines.

L. Chicago Casino

As to the development of the Casino, we issued guidance on lobbying to all elected officials, at the Mayor's request, and we issued guidance on the restrictions in the Ordinance for the ~80 City employees and officials who worked on the process of selecting the Casino operator, also at Mayor's request. We have worked closely with the Law Department, Mayor's Office, and the City's outside counsel (Taft, Stettinius and Hollister) to ensure that City personnel are informed of all reporting (and eventually, substantive ethics) requirements and prohibitions under the Illinois Gambling Act, 230 ILCS 10/1 et seq. Penalties for violating this law are severe: it is a Class 4 Felony under Illinois law, subjecting violators to fines up to \$25,000 and 1-3 years in prison. Note that the Gambling Act's reporting requirements are in addition to the restrictions in the Ethics Ordinance that would apply to those "applicants" who "communicate" with City officials or employees, such as the Ordinance's gifts restrictions and lobbyist registration requirements.

M. 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.

N. Summary Index of Board-Initiated Regulatory Actions/Adjudications/Pre-2013 Investigations

We post a 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, based on probable cause findings the Board makes as a result of its review of publicly available information, where no factual investigation by the IG is necessary. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/Invest-Index.pdf>

The Board makes public the names of all violators and penalties it assesses when authorized by law to do so. There have been, to date, 137 such matters. But only in those that occurred after July 1, 2013, can the Board release the names of those found to have violated the Ordinance. Since July 1, 2013, there have been 66 such matters.

O. Summary Index of Ongoing IG/LIG Investigations/Adjudications

There are currently no completed IG ethics investigations awaiting adjudication.

We post on our website and continually update an ongoing investigative record showing the status of every completed investigation brought to the Board by both the Office of Inspector General (13 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. See <https://www.chicago.gov/content/dam/city/depts/ethics/general/EnforcementMatters/PulbicScorecard.pdf>

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 complete 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 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 does not rebut the Board’s *prima facie* probable cause finding, the Board may enter into a public settlement agreement—or the Board or subject may decide to proceed to a merits hearing that is not open to the public. That hearing is 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 their attorney. At the conclusion of the hearing, the ALJ submits 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 may find violations of the Ethics Ordinance and impose appropriate fine, or find none and dismiss the matter.

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

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

Note: fines range from \$500-\$2,000 per violation for non-lobbying or non-campaign financing violations that occurred before September 29, 2019, and \$1,000-\$5,000 per violation for such violations occurring between September 29, 2019 and September 30, 2022. For violations occurring on or after October 1, 2022,

the fine range is between \$500 and \$20,000 per violation, and the Board may also assess a fine equal to any ill-gotten financial gains as a result of any Ordinance violation. Fines for unregistered lobbying violations remain at \$1,000 per day beginning on the fifth day after the individual first engaged in lobbying and continuing until the individual registers as a lobbyist.

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. All settlement agreements are posted here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/SettlementAgreements.html>

P. 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 they 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 they 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. In 11 matters, the Board has determined that minor violations occurred, and the Board sent confidential letters of admonition, as required by the Ordinance. These letters are posted on the Board's website, with confidential information redacted out. There is a matter on today's Executive Session agenda involving a possible minor violation.

Q. Litigation

Lee v. City of Chicago. In June 2020, the City was sued 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 ("PBPA"). 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, 2020, 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 moved to dismiss the enter matter. On February 25, 2021, Judge Demacopoulos granted the City's motion to dismiss concerning the facial challenge to sections 100(a) and (b) and also the as-applied challenge to section 100(a). The court, however, denied the motion concerning the as-applied challenge to section 100(b), but expressed concern that this claim may be moot. Count III was also dismissed; it asked for a declaratory judgment that, by enforcing the Ordinance, the City is violating PBPA members' right to "counsel of their choice." However, the court granted plaintiff leave to amend the complaint for all of the dismissed counts. Following the court's order on the City's motion to dismiss, the plaintiff was given leave to file an amended complaint, but he never did. Instead, he decided to move forward on the as-applied vagueness challenge to section 100(b) of the Ordinance. This is the only claim that survived the motion to dismiss. Judge Demacopoulos questioned whether this claim was moot in light of the expiration of the one-year ban that applied to the plaintiff but left it up to the plaintiff whether he wanted to pursue the claim. Plaintiff may seek compensatory damages if he can prove that he suffered damage. The City filed its answer and affirmative defenses to the amended complaint on April 26, 2021. The plaintiff filed discovery requests. Board legal staff met with our attorneys in the Law Department and forwarded materials necessary to respond to these

requests. There have been discussions regarding possible settlement of the matter as well, but the offer made by plaintiff to settle the matter was rejected. Our next Settlement Conference is February 15.

Note: several PBPA members filed grievances under their collective bargaining agreement, alleging that their right “to counsel of their choice” was violated by COPA. These were settled on terms that do not affect the Ethics Ordinance’s post-employment provisions.

Brookins v. Board of Ethics, et al. This matter is assigned to the Honorable David Atkins in the Chancery Division of Cook County Circuit Court. Alderman Brookins has sued the Board, alleging the Board violated his due process rights and improperly proceeded with an enforcement action against him (due to his practice of criminal defense law in cases involving the Chicago Police Department) without a factual investigation by the IG, and he sued me personally for defamation per se. The Board’s and my attorneys have moved to dismiss the entire lawsuit and have submitted briefs. We await a decision. Alderman Brookins is not running for re-election in 2023.

Czosnyka et al. v. Gardiner et al., docket number is 21-cv-3240. We and the City of Chicago are now dismissed out of this case. On June 17, six (6) individuals residing in the 45th Ward filed a lawsuit in United States District Court against 45th Ward Ald. James Gardiner and the City, alleging that their 1st Amendment rights were violated by the Ald.’s improper blocking of them on his “official” City social media accounts. The plaintiffs sought certification of a class of all those improperly blocked by the Ald. The suit also alleged that more than 20 complaints of improper blocking were filed with the Board and the IG, but the City “failed to take any action to reprimand Alderman Gardiner, although it has the power to do so,” and thus “acquiesced in [the Alderman’s] constitutional violations.” It seeks to have the plaintiffs reinstated as full participants in these social media accounts and unspecified damages. The case is before the Honorable Judge Sharon J. Coleman.

On October 26, 2021, Judge Coleman granted the City’s motion to dismiss it from the suit, and on January 12, 2022, denied the plaintiffs’ motion to reconsider her decision. Plaintiffs could appeal this decision to the Seventh Circuit Court of Appeals. The residents sought to hold the City liable under the “failure to discipline” *Monell* theory of municipal liability. Specifically, they argued that the City should be held liable for failing to investigate Ald. Gardiner through the IG and also for failing to fine him through the Board of Ethics.

Note that Ald. Gardiner retained independent counsel and moved to dismiss the suit on the basis that the social media site does not constitute an “official City site.” On February 10, 2022, Judge Coleman denied that motion, writing that:

“plaintiffs have plausibly alleged that Alderman Gardiner restricted their access to a public forum in violation of the First Amendment by barring them or deleting their comments from the interactive portions of his Facebook Page that designates Alderman Gardiner as a government official. These facts raise a reasonable inference that plaintiffs are not alone in suffering constitutional injuries resulting from Alderman Gardiner’s practices. Moreover, plaintiffs have set forth sufficiently detailed allegations that Alderman Gardiner knowingly banned constituents and engaged in content-based regulation of speech on his Facebook Page. Further, he did so unilaterally while seeking out engagement from users.”

On June 1, 2022, both the Board and IG received subpoenas from the plaintiff for internal records on this matter. We coordinated our response with the Law Department.

R. Open Meetings Act Challenges

The Board is now involved in three (3) challenges recently filed with the Illinois Attorney General by the same objector regarding its discussions in Executive Session. The Board is working with the Law Department on each.

S. Freedom of Information Act Challenge

We have been challenged for withholding documents relating to Board Case 22033.Q, concerning an advisory opinion the Board approved at the November 2022 meeting. We are working with the Law Department on this matter as well. The challenger is the same individual who brought the two (2) OMA challenges noted above. This matter is also pending before the Public Access Counsel at the Illinois Attorney General's Office.

T. Freedom of Information Act

Since the last Board meeting, the Board has received one (1) request, for complaints received against a sitting City elected official. We responded by denying the request, as complaints to the Board are confidential by law.

U. Employee Vaccination Status

I'm pleased to report that all seven (7) staff members are fully vaccinated for Covid-19, and in compliance with the City's policy on vaccinations.

V. PUBLIC COMMENTS

Citizen Peter Czosnyka commented that he is a constant figure at Board meetings, and that one of the Board's activities is listed as "Educating City personnel, vendors, lobbyists and the public about the Ordinances," which reminds him of a quote attributed to Ben Franklin: "Tell me and I forget, teach me and I may remember, involve me and I learn," and that over the last few months, he's mentioned a couple of City employees [sic]: Ald. Sposato with 30 years on the city payroll and 30 annual ethics trainings, and Ald. Gardiner with 20 years on the city payroll and 20 annual ethics trainings, and that he suggested that the Board's activity more accurately be listed as: "Telling City personnel, vendors, lobbyists and the public about the Ordinances" and they forget. He then quoted from one of the now public depositions in an ongoing federal case in which he is a named plaintiff:

Q: So, he (Gardiner) told you that he was coordinating with Alderman Napolitano and Alderman Sposato about trying to get Pete Czosnyka off Facebook?

A: Yes. "He referred to them as Nick and Naps."

Decades of ethical training for the three (3) firefighter/Alderpersons and they are "coordinating ... about trying to get Pete Czosnyka off Facebook." It doesn't seem like decades of ethical training worked for these three. It should come as no surprise to the Board staff that Ald. Gardiner, under oath, in deposition said: "I have an email from the Board of Ethics to say to go ahead and block Pete Czosnyka," one of many similar statements that throw the Board under the bus. He also stated that Ald. Gardiner also claims to have no knowledge of Board of Ethics Guidance Letter 18038, despite his staffer's recollection that the Board of Ethics representative

mentioned 18038 in training, the staffer and Gardiner had discussed it multiple times and that it hung on a corkboard in the aldermanic office. Finally, he stated that "We've heard numerous times that the Board of Ethics is prohibited from 'investigating.'" Yet the Board staff, per testimony given under oath by Gardiner, is telling Gardiner to remove my First Amendment rights. He posited that this is unethical behavior by the Board's staff, if indeed that is what happened and that his due process is no less important than a City worker's. Finally, he commented, for the Board and the Office of Inspector General on illegally placed oversized political signs, that various City Departments are now effectively colluding to aid incumbents by enforcing only some of the pertinent, supposedly content neutral, sign ordinances, and that the Board's Executive director is being kept in this ongoing email loop.

VI. OLD BUSINESS

None

VII. NEW BUSINESS

None

VIII. PRIOR BOARD MEETING'S EXECUTIVE SESSION MINUTES

This matter shall be discussed in Executive Session.

At 3:17 p.m., the Board VOTED 5-0 (Dr. Stephanie Cox-Batson, 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, specific individuals who serve as independent contractors in a park, recreational, or educational setting, or specific volunteers of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee, a specific individual who serves as an independent contractor in a park, recreational, or educational setting, or a volunteer 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.

At 4:35 p.m. the Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to reconvene in Open Session.

IX. MATTERS CONSIDERED BY THE BOARD IN EXECUTIVE SESSION

I. APPROVAL OF THE EXECUTIVE SESSION MINUTES

The Board confirmed its discussion in Executive Session, and VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) in Open Session, to approve the Executive Session Minutes of the December 12, 2022 meeting.

II. OLD BUSINESS

None

III. NEW BUSINESS

None

IV. CASEWORK

A. Advisory Opinion

1. Case No. 22035.A, Unregistered lobbying

The Board VOTED 4-1 (Dr. Stephanie Cox-Batson, absent) to dismiss the case as, under the circumstances, there was no lobbying activity evident.

B. Determination Whether to Find Probable Cause after Issuance of 10-Day Notice of Potential Probable Cause Determination

2. Case No. 22036.L, Unregistered Lobbying

The Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to issue a notice of a finding of probable cause to the respondent that the respondent violated the Ordinance by engaging in unregistered lobbying, providing the respondent with an opportunity to rebut the finding through either written materials or attendance at a Board meeting, or both.

C. Received and/or Referred Complaint Report

3. Case No. 23006.C, Prohibited Political Activity, Unauthorized Use of Real or Personal City Property

The Board received a formal complaint in this matter on January 12. The complaint alleges that the campaign of a candidate for elected City office violated the Ordinance's gift and prohibited political activity provisions by sending emails asking to governmental employees at their official governmental email addresses; the emails requested participation in the campaign. The Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to refer the complaint for full factual investigations to the Offices of the Inspectors General of the City and of the government entity that employs the emails' recipients, per §2-156-380(a) of the ordinance.

The Chair expressed his confidence that the relevant Inspector Generals' Offices will conduct thorough, professional, unbiased investigations, that could aid the Board in determining whether there were violations in this matter, as in other matters where factual investigations are required.

4. Case No. 22039.01-.06.C, No Jurisdiction

The Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to dismiss a citizen complaint alleging that six (6) City employees violated the Governmental Ethics Ordinance by posting racially/culturally insensitive comments on another's social media page. The employees' department investigated the matter and determined the employees had violated departmental policy, and disciplined them. The Board dismissed the complaint on the basis that the matter had already been investigated and adjudicated by the employees' City department.

5. Case No. 23004.C, No Jurisdiction

The Board received repeated citizen complaints alleging that campaign signage violated one or more provisions of the City's Municipal Code other than the Governmental Ethics Ordinance, and thereby allegedly violated the Governmental Ethics Ordinance. The Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to refer this matter to the Office of Inspector General for a full factual investigation, and to approve staff's advice to the complainant/s, referring the complainant/s to the appropriate City agency that has jurisdiction to investigate and/or adjudicate the alleged violation/s of the Municipal Code other than the Governmental Ethics Ordinance.

6. Case No. 23009.C, No Jurisdiction

The Board received multiple citizen complaints alleging that a social media post on an official City social page of an elected official constituted improper harassment of a citizen, and contained improper electioneering content. The Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to approve staff's referral of the complaint to the Office of the Inspector General for a full factual investigation.

D. Report on Issuance of Probable Cause Notices Pursuant to §2-156-505

7. Case Nos. 23005.01-.10.FIS, Late or Non-filing of 2022 Statements of Financial Interests/Candidates for Alderperson or Candidates for District Council Member of the Community Commission for Public Safety and Accountability

The Chair stated that the Board had heard staff's report on the matter, involving candidates for Alderperson or candidates for District Council Member of the Community Commission for Public Safety and Accountability who had not yet filed their Statements of Financial Interests forms.

E. Self-Report of Violation, Consideration of Minor Violation

8. Case No. 23007.C, Prohibited Political Activity

A City official self-reported that they had inadvertently sent emails soliciting political contributions from their City email account, but from their personal, non-City laptop, but then, immediately realizing the error, recalled the emails and re-sent them from an appropriate email account. Following Case nos. 21037.C and 20008.C, the Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to determine that this constituted a minor violation and to send the official a confidential letter of admonition.

F. Determination to Issue 10-Day Notice of Intent to Find Probable Cause

9. Case No. 23008.C, Prohibited Political Activity, unauthorized Use of Real or Personal City Property

Based on a citizen complaint, the Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to issue a candidate a 10-day notice of intent to find probable cause. The complaint alleges that electioneering communications on behalf of the candidate improperly displayed City intellectual property.

10. Case No. 23010.C, Prohibited Political Activity, Unauthorized Use of Real or Personal City Property

Based on a citizen complaint, the Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to issue a candidate a 10-day notice of intent to find probable cause. The complaint alleges that electioneering communications on behalf of the candidate improperly displayed City intellectual property.

The Chair, on behalf of the entire Board, urged that all candidates for elected office and their affiliated campaign officials and staff immediately and thoroughly scrub their email lists of any governmental addressees, whether City employees or officials or those of the City's sister agencies, as emails sent to such addresses soliciting political contributions or requesting other participation in political activity may be considered coercive.

At 4:57 p.m., the Board VOTED 5-0 (Dr. Stephanie Cox-Batson, absent) to adjourn the meeting.