

## Executive Director's Report January 22, 2024

### Amendments to the City's Ethics Laws

**The Board's own proposals.** We have been in communication with the City Council's Committee on Ethics and Government Oversight with respect to introducing an ordinance that would incorporate many of the Board's recommendations for strengthening the City's ethics laws. On November 14, 2023, pursuant to the Board's powers and duties under §§2-156-380(e), (f), and (g) of the Governmental Ethics Ordinance, the Board formally submitted its *revised* proposed amendments to the City's ethics laws to the Mayor and City Council. They are posted here:

<https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/news/2024/november/propAmends.html>

These proposals: i) would impose tighter regulation of City Council independent contractors; ii) address the use of photographs of City property (such as Chicago Police or Fire Department insignia, badges, uniforms, or equipment) in electioneering communications by, among other things, subjecting political fundraising committees to the Ordinance's restrictions, thereby granting the Board and Inspector General jurisdiction over such committees in this respect; iii) address improper coercive electioneering communications addressed to City employees or officials, and impose a "stand by your ad" requirement that candidates for City office certify that they have reviewed all electioneering communications disseminated by their authorized political fundraising committees; iv) clarify the political activity prohibitions; and v) address closing a gap in the City's campaign contribution limitations law, realizing that work is being done on a public financing law, which, if enacted, could moot this recommendation.

**City Council members' outside income/employment.** The Board's proposals intentionally did *not* address changes to the City's lobbying laws, or the latest proposals to make the position of alderperson full-time. As to City Council member's outside income or employment, that is the subject of a proposal discussed last week at a meeting of the Committee on Ethics and Government Oversight. It's the focus of O2023-2167, submitted last Spring by 40<sup>th</sup> Ward Ald. Vasquez. Board legal staff researched how our peer cities handle this City Council outside employment issue (New York City, Philadelphia, Washington DC, Atlanta, San Diego, Los Angeles, San Francisco, and Seattle). On January 18, I testified before the City Council's Committee on Ethics and Government Oversight on this topic generally. My opening remarks are posted here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/news/2024/january/read-the-executive-director-s-testimony-on-city-council-members-.html>.

I publicly suggested more frequent disclosures by City Council members of their outside employment; under current law, they must disclose any source of income of more than \$1,000 from the previous year if they were derived it as an officer, director, associate, partner, proprietor or employee of any entity or person, as well as the name, address, and type of professional, business, or other organization from which that income was derived. That is, these disclosures should be made annually, for the current year, and updated whenever there is a change. The Board, the Clerk, or the City Council itself could administer this requirement and post such disclosures.

**Lobbying Law Revisions.** Substantial revisions to the City's lobbying laws were passed into law by the City Council on December 13, 2024. We posted them here: [https://www.chicago.gov/content/dam/city/depts/ethics/supp\\_info/GEO-2019-color%20through%20July%202024.pdf](https://www.chicago.gov/content/dam/city/depts/ethics/supp_info/GEO-2019-color%20through%20July%202024.pdf). Board legal staff worked closely with representatives from the City Council's Committee on Ethics and Government Oversight, Mayor's Office, Law Department, and the philanthropic and public charity communities on these amendments, and on behalf of the Board, I extend my thanks and congratulations to all who were involved in this effort, especially to the Chair of the City Council's Committee on Ethics and Government Oversight, 47<sup>th</sup> Ward Alderperson Matt Martin, and his amazing staff. The new laws take effect on July 1, 2024.

By way of highlight, the amendments: i) re-impose thresholds for all individuals that must be met before they would be required to register as lobbyists (more than 20 hours in lobbying as defined, or expending or being compensated more than \$1,250 for lobbying as defined, per calendar quarter); ii) exempt individuals who lobby solely on behalf of any nonprofit with an operating budget or a net assets or fund balances of less than \$5 million dollars; capping all lobbying fines at \$20,000 per violation; iii) add a "self-defense communication" exemption from lobbying for non-profits; iv) codify Board opinions from late 2019-early 2020 that nonprofit personnel who serve on advisory committees at the City's request are not thereby lobbying unless they advocate for new resources or programs for their own nonprofit; and v) clarify which actions constitute "administrative action" and "legislative action."

Until the law takes effect, the Board is working closely with the Committee to engage in education and outreach efforts.

Note that, as of December 2023, 122 individuals from the non-profit community were already registered with the Board.

### **2024 Statements of Financial Interests**

In late January 2024, we will contact all departments, ward offices, City Council committees, and the Mayor's Office of Intergovernmental Affairs, to compile the list of all those City employees and officials who will be required to complete these Statements for 2024. Then, on February 28/March 1, as required by law, we will notify an anticipated 3,925 City employees and officials required to file 2024 Statements of Financial Interests ("FIS forms") of their requirement to file before May 1, 2024, with the link to file electronically.

All filed 2023 forms are posted and viewable here, where they stay for seven (7) years after they are filed:

<https://webapps1.chicago.gov/efis/search>

### **Education**

#### **On-line Training**

**For all employees and officials.** On January 17, we determined that 188 City employees and officials had violated the Ordinance for failure to complete their 2023 online training on time; that number has been revised to 171, after we were informed by various departments that 17 of the 188 individuals are no longer employed by the City. As required by law, we posted their names and fine information here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/Publications/Viol-Train-2023.pdf> .

We will post the all-new 2024 online training for all employees and elected officials, and for lobbyists, in the next few weeks, and post the appointed officials training by the end of February.

#### **Classes and other presentations**

We cancelled all in-person classes from March 2020 on, given the course of the pandemic. We extended all training deadlines accordingly, and will restart them in February. All Board classes and educational programs cover sexual harassment. We are reaching out to all City Council offices to schedule classes for them at Chicago Public Library facilities or their offices. We are also in the process of scheduling in-person classes for Mayor Johnson and key members of his team.

We presented a class to employees from the Civilian Office of Police Accountability (COPA) on January 9, and will present a class for employees of the Department of Planning & Development on January 26, and a class for staff of various non-profit organizations on February 2, at the invitation of the Illinois Environmental Council.

#### **Advisory Opinions**

Since the Board's last meeting, we have issued 276 informal advisory opinions. The leading categories for informal opinions were, in descending order: Gifts; Travel; City Property; Political activity; Campaign financing; Outside employment; Financial Interest in City business; and Representation of other persons.

The leading City departments from which requesters came in this period were, in descending order: City Council; Mayor's Office; Chicago Police Department/Civilian Office of Police Accountability (COPA)/Community Commission for Public Safety and Accountability (CCPSA); Department of Public Health; Department of Finance; Department of Technology and Innovation ("DTI," formerly Assets, Information and Services); and Chicago Fire Department. 74% of all inquiries came from City employees or elected officials, the remainder from attorneys, vendors, lobbyists or potential lobbyists.

Informal opinions are confidential and 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 are no formal opinions on today's agenda for consideration.

### **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](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.

### **Lobbyists Filings**

Currently approximately 776 lobbyists have filed their 2024 registrations, and we expect more. The deadline to re-register or terminate, and to file Q4 2023 activity reports, is tonight, January 22 at 11:59:59 pm. We posted a preliminary list of 2024 registered lobbyists on January 18, here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/LobbyistStuff/LISTS/LobbyistList.xls> and as of then had collected \$113,500 in 2024 registration fees, but of course that number is not current. We will post a completed list of all lobbyists and their clients and release the revenue figure when registrations are complete.

All lobbyists were sent weekly reminders of their filing deadlines, beginning in early December 2023.

Lobbyists' filings dating back to 2014 can be examined here: [https://webapps1.chicago.gov/elf/public\\_search.html](https://webapps1.chicago.gov/elf/public_search.html).

Third quarter lobbying activity reports were due before October 21. All lobbyists were sent *weekly* reminders of this deadline, beginning September 30. Lobbyists who did not timely file their reports were sent reminders on October 25, 2023 to file before November 9; 14 did not and were sent due process letters to file no later before November 25 or they would be found in violation. Seven (7) did not file and were found in violation. For one (1) lobbyist a fine of \$ 1,000 per day began accruing on November 27, 2023 and stopped when that lobbyist filed on November 30<sup>th</sup>. That lobbyist was sent a demand letter to pay a \$4,000 fine. The names of all seven (7) were published as having violated the Ordinance, one showing a fine of \$4,000.

All registered lobbyists must re-register or terminate their registrations before January 21, 2024. Weekly emails notifications and reminders will be sent to all registered lobbyists beginning December 20.

### **Sister Agencies**

We have been consulting with our colleagues at the Chicago Public Schools (CPS) regarding the election next year of school board members. We will next meet with our fellow ethics officers from all the sister agencies, as well as the Cook County Board of Ethics and Cook County Assessor's Office, in March 2024.

### **Update of Vendor Databases**

As required by law, the City's DTI 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. Recently we worked closely with the Mayor's Office, AIS, the Department of Finance, and the Department of Procurement Services to improve that database, and met 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. The new, improved database of persons who have done business with the City was posted here: [https://www.chicago.gov/city/en/depts/ethics/supp\\_info/list-of-contractors.html](https://www.chicago.gov/city/en/depts/ethics/supp_info/list-of-contractors.html) and several sister agencies have updated their databases as well.

## **Waivers**

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted eight (8) and denied three (3) waiver requests.

## **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. 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 nearly 90 such matters.

## **Summary Index of Ongoing/Past IG/LIG Investigations/Adjudications**

There are currently ten (10) completed IG ethics investigations in the process of adjudication. More information on these cases is posted here: <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/ongoing-summary-of-enforcement-matters.html>.

The first, 23045.IG, was sent to the Law Department for the drafting of charges and a confidential administrative hearing, pursuant to §2-156-392. The City is being represented by the law firm of Hinshaw & Culbertson, and the matter will be heard before ALJ Frank Lombardo. The Board is pursuing a \$20,000 fine.

In the second, 23050.IG, the Board found probable cause and met with the subject's counsel in November 2023. It is on today's agenda for consideration of further action, and possible settlement. The Board is pursuing the maximum \$5,000 fine in this matter. The subject had earlier expressed the desire to proceed to a confidential administrative hearing, pursuant to §2-156-392, and the matter was assigned to ALJ Frank Lombardo. The City is being represented by law firm of Kulwin, Masciopinto and Kulwin, LLP.

In the third and fourth, 23054.IG and 23055.IG, the Board found probable cause at its November 2023 meeting and will meet with the subject and/or subject's attorney at the February 5 meeting.

In the fifth, 23053.IG, the Board found probable cause at its November 2023 meeting. The matter is on today's agenda for a meeting with the subject and the subject's attorney, where they will attempt to reverse the Board's probable cause finding.

In the sixth and seventh, 23059.IG and 23063.IG, the IG submitted its completed investigations to the Board on November 14 and November 20, 2023, respectively. The Board found probable cause in both cases at its December 2023 meeting. Both subjects and their attorneys will meet with the Board at its February 5 meeting to attempt to rebut the Board's findings.

In the eighth case, 23065.IG, the IG delivered its completed investigation to the Board on December 18, 2023. The matter is on today's agenda for a finding of probable cause.

In the ninth case, 23066.IG, the IG delivered its completed investigation to the Board on December 26, 2023. The matter is on today's agenda for a finding of probable cause.

In the tenth case, 23067.IG.1, .2, and .3, the IG delivered its completed investigation to the Board on December 30, 2024. The matter is on today's agenda for a finding of probable cause. The matter involves three (3) employees from the same City department; the IG concluded that one of them had a prohibited financial interest in City contracts, and that the others knew of this violation but failed to report it to the IG as required by §2-156-018(a).

More complete summaries of these cases are available on our website, subject to the Ordinance's confidentiality

requirements. 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 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 this record as appropriate, consistent with the Ordinance’s confidentiality provisions. See <https://www.chicago.gov/city/en/depts/ethics/provdrs/reg/svcs/ongoing-summary-of-enforcement-matters.html> and <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 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 the ethics investigation was commenced within five (5) years of the last alleged act of misconduct.

If the Board finds that the evidence presented warrants a 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 also request clarification from the IG as to any evidence found in its investigation before making a probable cause finding, or refer the matter back to the IG for further investigation (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 probable cause finding, the Board may enter into a public settlement agreement– or the Board may find there was a violation and the Board or the subject may proceed to a hearing on the merits 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 that hearing, the ALJ submits their 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 fines, or find no violation and dismiss the matter.

These processes are 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; (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>

### **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.

### **Litigation**

*Czosnyka et al. v. Gardiner et al.*, docket number 21-cv-3240. As was widely reported, Judge Sharon Johnson Coleman ruled on this matter on September 25, granting the plaintiffs' motion for summary judgment. The decision is published here: <https://casetext.com/case/czosnyka-v-gardiner-2>. We are gratified that the Court explicitly cited this Board's formal advisory opinion in Case 18038.A.1, which is posted here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/AO-City%20Owned%20Property/18038.A.1.pdf>.

The Board and the City of Chicago were previously dismissed out of this case.

We continue to be asked about when, if ever, City elected officials may block persons from their official and/or their personal or political sites. Our interpretation of the Governmental Ethics Ordinance has not changed since issuing our advisory opinion in Case No. 13038.A.1: <https://www.chicago.gov/content/dam/city/depts/ethics/general/AO-City%20Owned%20Property/18038.A.1.pdf>. Still, we are following the cases argued recently before the U.S. Supreme Court in *O'Connor-Ratcliff v. Garnier* (docket # 22-324) and *Lindke v. Freed* (docket # 22-611), which involve blocking from personal or political accounts. Obviously we will follow the law as announced by the Supreme Court, and anticipate a decision next June.

### **Open Meetings Act/FOIA Challenges**

The Board is involved in five (5) challenges filed with the Illinois Attorney General by the same person. These challenges request: (1) a review of the propriety of adjourning into executive session during the Board's September 11, 2023 meeting under the Open Meetings Act ("OMA"). (2) A review of the propriety of adjourning into executive session during the Board's August 14 and September 11, 2023 meetings under OMA. (3) (i) A review of the propriety of adjourning into executive session during the Board's May 16, 2022 meeting under OMA; AND (ii) A review of the Board not producing certain records pursuant to the Freedom of Information Act ("FOIA"). (4) A review of the propriety of adjourning into executive session during the Board's July 18, 2022 meeting under OMA. (5) A review of the Board not producing certain records pursuant to FOIA. The Board has worked with the Law Department and responded to each. The Board awaits replies from the Illinois Attorney General.

### **Freedom of Information Act**

Since the last Board meeting, the Board has received four (4) requests.

The first was for the Board's advertising budget and expenditures; we responded that we located no responsive records.

The second request was for correspondence between the Board and a City official; we responded that the request was too broad and needed narrowing for the Board to properly comply.

The third request was for aldermanic outside employment forms; we responded with a link on our website to Statement of Financial Interests filings.

The fourth request was for documents over a period of years regarding an entity; we responded that the request was too broad and needed narrowing for the Board to properly comply.