

Executive Director's Report December 11, 2023

Amendments to the City's Ethics Laws

The Board's own proposals. On November 14, pursuant to its 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.

(Note: the Board's proposals do *not* address changes to the City's lobbying laws, or the latest proposals to make the position of alderperson full-time. (Those are, respectively, the subjects of O2023-0002937: <https://ocprodstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/28740a2a-66d9-4f04-8afa-073b7e0c825f.pdf> ,

O2023-2167:

<https://ocprodstoragev1.blob.core.usgovcloudapi.net/lsmatterattachmentspublic/b6c99d86-fa94-4462-9d4a-14f7f1c6e2ff.pdf>

and O2023-0002228:

<https://ocprodstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/66607fc5-83d1-40e9-a76d-4771988d09cb.pdf>).

However, we have 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), and will make this information available to the public and the City Council's Committee on Ethics and Government as appropriate.

Lobbying Law Revisions. Board legal staff has 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 amendments. Last week, I attended four (4) briefings for City Council members on the amendments. Today, I testified in favor of the current substitute ordinance, submitted by Ethics and Government Oversight Committee Chair Ald. Matt Martin (47th). The Committee approved the substitute, and it will be before the full Council on Wednesday for approval. By way of highlight, the amendments would: 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 nonprofits; 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."

The measure would not take effect until July 1, 2024; until then, the Board will work closely with the Committee to engage in education and outreach efforts.

Note that 122 individuals from the non-profit community are already registered with the Board.

2023 COGEL Conference

Last week, staff attended the annual Council on Governmental Ethics Laws (“COGEL”) Conference in Kansas City, MO, together with more than 450 other attendees from ethics, lobbying, and campaign financing regulators, private practitioners, and academics from all over North America. Personally speaking, I was honored to be the recipient of the 2023 COGEL Award, and am pleased and touched to report that Chair William Conlon made a special appearance at the award presentation. For more on the award and its previous recipients, please see:

<https://www.cogel.org/page/Call4Nominations>

The 2024 annual conference will be held in December 2024 in Los Angeles.

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 approximately 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. To date, approximately 31,666 employees (and 33 City Council members) have completed the 2023 mandatory online training (~ 97% of the expected total). The deadline for completing the training is before January 1, 2024. We are sending out daily reminders via email to those who have not yet completed their training.

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 all appointed officials. To date, 321 appointed officials (67% of the expected total) completed the appointed official version of the training; their deadline is also before January 1, 2024.

For lobbyists. We will post all new online training programs in February 2024.

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 members of the Board of Health on October 25, and to incoming laborers from various departments on December 1 and 8, and on the lobbying amendments to Latino Leaders on December 1.

Advisory Opinions

Since the Board’s last meeting, we have issued 317 informal advisory opinions—another busy period. The leading categories for informal opinions were, in descending order: Gifts; Travel; Lobbying; Political activity; Campaign financing; City property; 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; Chicago Police Department/Civilian Office of Police Accountability (COPA)/Community Commission for Public Safety and Accountability (CCPSA); Mayor’s Office; Department of Public Health; Chicago Public Library; Law Department; and

Chicago Fire Department. 80% of all inquiries came from City employees or elected officials, the remainder from attorneys, vendors, lobbyists or potential lobbyists.

Again, I am pleased to report that the number of inquiries and complaints from members of the public continues; we received 21 in this period alone.

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.

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

863 lobbyists are currently registered with us, and we have collected \$406,850 in 2023 registration fees. A current list of all lobbyists and their clients was posted last Friday, December 8, here:

<https://www.chicago.gov/content/dam/city/depts/ethics/general/LobbyistStuff/LISTS/LobbyistList.xls>

Lobbyists' filings dating back to 2014 can be examined here: 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 30th. 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 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. 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 and several sister agencies have updated their databases as well.

Chicago Casino

As to the development of the Casino, we issued guidance on lobbying to all elected officials, at former Mayor Lightfoot'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 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. We worked with the Law Department on final guidance to be sent to all City governmental personnel as to applicable ethics rules, such as accepting gifts or food or drink—this guidance was issued on September 8.

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 eight (8) completed IG ethics investigations in the process of adjudication.

The first, 23045.IG, was sent to the Law Department for the drafting of charges and an administrative hearing, pursuant to §2-156-392.

The second, 23043.IG, was returned to the IG for further investigation in May 2023. The IG completed its supplemental investigation; the matter is on today's agenda for a meeting with the subject, based on these supplemental investigative materials.

In the third, 23050.IG, the Board found probable cause and met with the subject's counsel in November. It is on today's agenda for consideration of further action.

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

In the sixth, 23053.IG, the Board found probable cause at its November meeting and the subject's attorney has indicated they will submit written materials for the Board to consider (in the subject's attempt to rebut the Board's probable cause finding) at its January meeting.

In the seventh and eighth, 23059.IG and 23063.IG, the IG submitted its completed investigations to the Board on November 14 and November 20, respectively. They are on today's agenda's for findings of probable cause.

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 Shirley 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 request was from an anonymous user for February-November 2023 minutes and audio/video transcripts; we responded with links to open sessions, links to the FOIA law denying closed sessions disclosure and denial of a request for any internet address for open session flash drives.

The second was for FOIA officer voice mails; we responded that we were the wrong department.

The third was for staff business cards; we provided these.

The fourth was for a date to inspect FOIAs and FOIA officer personnel files and training certificates; we responded with a date for inspection but advised that we were the wrong department for personnel files.