

Executive Director's Report May 13, 2024

Amendments to the City's Ethics Laws

The Board's own proposals. On January 24, 2024, our proposals were submitted to the full City Council through the Chair of the City Council's Committee on Ethics and Government Oversight, 47th Ward Ald. Matt Martin. They were designated O2024-0007359, and are posted on the City Clerk's website here:

<https://occpodstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/78f11f46-552f-4b49-b357-cdb7b2f130ec.pdf>.

We were informed last week by Ald. Martin's staff that there are no current plans to hold a committee hearing on these proposed amendments. We are unsure of the reasons. This is most disappointing; we believe these amendments are timely and important. We will continue to work toward their passage, and garner support among City Council members and the Administration. If enacted, they would have: i) imposed tighter regulations with respect to City Council independent contractors; ii) addressed the use of City property (such as Chicago Police or Fire Department insignia, badges, personnel uniforms, or equipment) in electioneering communications, and, among other things, subject political fundraising committees to the Ordinance's restrictions, thereby granting the Board and Inspector General ("IG") jurisdiction over such committees in this respect; iii) addressed electioneering communications sent to City employees or officials, and imposed a "stand by your ad" requirement such that candidates for City office must certify that they have reviewed all electioneering communications disseminated by their authorized political fundraising committees; iv) clarified the political activity prohibitions; and v) closed a gap in the City's campaign contribution limitations law.

Draft proposals based on Executive Order 2011-2. On today's agenda is a draft amendment that would codify Mayoral Executive Order 2011-2. That Order, signed by then-Mayor Rahm Emanuel on May 11, 2011, prohibits political contributions in any amount to the Mayor or the Mayor's political fundraising committee. Last month, the Board publicly recognized (based on an opinion of counsel retained by the Law Department) that it has no authority to enforce the penalty provision of the Order, which provides that "the Board shall not accept a lobbyist registration statement from any person who it finds to have violated this Order." This draft expands on the Executive Order in several ways: it provides that any registered lobbyist, *or any entity in which a registered lobbyist owns more than 1%* that contributes either to the Mayor or the Mayor's authorized political committee, *or to any candidate for Mayor to that candidate's committee*, be subject for their first violation to a fine a fine of three times (3x) the amount of the contribution, regardless whether the committee returns the contribution or the lobbyist requests such a return, and to suspension of their lobbyist registration for 90 calendar days for any subsequent violations.

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. 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. 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, 47th Ward Ald. Matt Martin, and his fine 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 non-profit with an operating budget or a net assets or fund balances of less than \$5 million dollars; iii) cap all lobbying fines at \$20,000 per violation; iv) add a "self-defense communication" exemption from lobbying for non-profits; v) codify Board opinions from late 2019-early 2020 that non-profit 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 non-profit; and vi) clarify which actions constitute "administrative action" and "legislative action."

The Board has been working closely with the Committee on education and outreach efforts.

2024 Statements of Financial Interests

On March 1, 4,058 City employees and officials were sent email notice of their requirement to file 2024 Statements of Financial Interests ("FIS forms") on or before May 1, 2024, with the link to file electronically. On May 8, as required by law, we sent 95 City employees and officials notices of probable cause that, despite having been sent repeated reminders

from our office and their own departments, they had failed to file by the deadline. They have until May 16 to respond and provide valid reasons why they did not timely file; fines of \$250 per day begin on May 17 until they file.

Forms filed in 2017 and after 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 17,450 employees and 22 elected officials have completed the all-new 2024 online training (their deadline is before January 1, 2025), and 437 lobbyists have completed their training (their deadline is before July 1, 2024). Later this week, we will post the appointed officials training, for approximately 550 appointees to City boards and commissions (their deadline is before January 1, 2025).

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 May, in our offices and at various locations throughout the City.

All Board classes and educational programs cover sexual harassment. We are reaching out to all City Council offices and have scheduled classes for them at Chicago Public Library facilities, or their offices.

On April 24, we presented a class to personnel from the Office of the City Treasurer.

We will present a class to Mayor Johnson and all personnel in the Mayor's Office on May 14, and have a backup class scheduled for June—before the DNC.

On May 20, we will make a presentation to non-profit personnel from various entities, organized by the Chicago Community Trust. We have several tutorials on our website to assist lobbyists and others in understanding the new lobbying laws, and using our ELF System, here:

https://www.chicago.gov/city/en/depts/ethics/supp_info/elfinstructions.html

On June 10, we will present a class for all Mayoral Fellows.

Advisory Opinions

Since the Board's February meeting, we have issued 337 informal advisory opinions – another very busy period. The leading categories for informal opinions were, in descending order: Travel; Statements of Financial Interests; Gifts; Political activity; Lobbying; Financial Interest in City business; Post-employment; Campaign Financing; and Outside employment.

The leading City departments from which requesters came in this period were, in descending order: Chicago Police Department/Civilian Office of Police Accountability (COPA)/Community Commission for Public Safety and Accountability (CCPSA); City Council; Mayor's Office; Department of Planning and Development; Department of Law; Department of Technology and Innovation; Department of Public Health; Department of Housing; Chicago Public Library; Department of Cultural Affairs and Special Events; and the Department of Aviation. 66% of all inquiries came from City employees or elected officials; the remainder came from attorneys, vendors, lobbyists or potential lobbyists.

Please note also that we continue to receive record numbers of complaints from members of the public: since the last Board meeting, we have received eight (8). We refer complainants to agencies that can help them, typically the IG.

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 68 formal opinions.

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>.

A few other ethics agencies have comparable research tools. We are unaware of jurisdictions that make their *informal* opinions public — though, like we do, others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement.

Lobbyists Filings

Currently 839 individuals are registered as lobbyists, and we have collected \$345,300 in 2024 registration fees. The deadline for filing Q1 activity reports was no later than Monday, April 22, 2024. On April 25, 2024, as required by law, we sent 26 lobbyists formal notice that they had not timely filed their reports. They had until May 9 to file, or be found in violation of the law and fined \$250 per day until they file. All 26 late lobbyists filed before the deadline.

On May 9, we posted a current list of registered lobbyists and their clients 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.

Sister Agencies

We will next meet with our sister agency ethics counterparts on June 25.

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. There is one (1) waiver request on today's agenda.

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.

There is currently one (1) such matter on today's agenda. It involves a lobbyist whose lobbying entity made a political contribution to Mayor Johnson's authorized political committee by registered lobbyists, in apparent violation of Mayoral Executive Order 2011-2—the lobbyist had argued that this was not a violation because the company the lobbyist owns made the contribution, not the lobbyist personally. This issue is moot, as the Board has no authority to enforce the Executive Order, and the matter is on the agenda for dismissal. Note that the draft amendment to the Ordinance that would codify this Executive Order would subject not only any registered lobbyist to the contribution ban, but also ban such contributions from any entity in which the lobbyist owns more than 1%.

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

There are currently nine (9) 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; it met with the subject's counsel in November 2023 and concluded that the subject bribed a City employee and imposed the maximum fine of \$5,000. The matter might be settled, but the subject 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. Charges were drafted. The City is represented by the law firm of Kulwin, Masciointo and Kulwin, LLP.

In the third and fourth, 23054.IG and 23055.IG, the Board found probable cause at its November 2023 meeting. The Board met in February with the subject's attorney. After that meeting, the Board requested further clarification from the IG, received that clarification, and presented it to the subject's counsel. The Board found 12 violations in 23054.IG and assessed a \$60,000 fine; the latter matter is on the agenda for a potential finding of two (2) violations, with a maximum penalty of \$5,000 per violation.

In the fifth case, 23066.IG, the IG delivered its completed investigation and probable cause petition to the Board on December 26, 2023. The Board found probable cause at its January 2024 meeting. The case involves allegations that the subject, a City employee, failed to disclose, on several Statements of Financial Interests, income received in excess of \$1,000 from a company the subject owned. The subject submitted responses to the Board's finding through their attorney. The matter is on today's agenda for consideration of whether the subject successfully rebutted the Board's probable cause finding.

In the sixth case, 23067.IG.1, .2, .3, and .4, the IG delivered its completed investigation to the Board on December 30, 2023. The matter involves four (4) employees from the same City department (one of whom is now retired). The IG concluded that one of them had a prohibited financial interest in City contracts, and that two of the others knew of this violation but failed to report it to the IG as required by §2-156-018(a). At its January 2024 meeting, the Board voted to refer the matter back to the IG, because the evidence adduced in the IG's investigation appears to show that the *fourth* employee from the same department also violated §2-156-018(a) by failing to report the violation to the IG. The Board requested that the IG review its investigation, and if appropriate, petition the Board for a probable cause finding with respect to that fourth employee. The IG reviewed the matter and then petitioned the Board for a probable cause finding with respect to all four (4) employees; the matter is on today's agenda for consideration as to whether to find probable cause as to all four.

In the seventh case, 24003.IG, the IG delivered its completed investigation to the Board on February 2, 2024. The matter involves an investigation into the deletion of comments from an elected official's official social media account. The Board requested and received clarification from the IG on certain factual issues; the matter is on today's agenda for consideration whether to find probable cause, or to seek further clarification from the IG based on the factors set out by the U.S. Supreme Court in its decision in *Lindke v. Freed*: https://www.supremecourt.gov/opinions/23pdf/22-611_ap6c.pdf .

The eighth and ninth cases, 24004.IG and 24005.IG, were both presented by the IG to the Board on February 27, 2024, with requests for probable cause findings. The cases involve attempted bribery of City building inspectors. The Board found probable cause in each matter at its April 2024 meeting. Both are on today's agenda for consideration of whether the subjects successfully rebutted the Board's findings. The Board could conclude that the findings were not rebutted, assess fines, and seek settlement or determine to pursue the fines in an administrative hearing.

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 IG 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 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 may find there was a violation and 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 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>.

We of course are bound by the recent U.S. Supreme Court decisions in *O'Connor-Ratcliff v. Garnier* (docket # 22-324) and *Lindke v. Freed* (docket # 22-611 – linked to above), which involve blocking from personal or political accounts. We are watching to see whether the defendant files a petition to vacate the Judge's ruling based on the *Lindke v. Freed*.

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.

In addition, on March 8, a sixth challenge was filed with the Illinois Attorney General's PAC by a citizen, alleging that the Board is in violation of the FOIA because it has no responsive document of instructions to persons assessed a fine by the Board as to how they should pay that fine. The challenge was dismissed by the PAC.

Freedom of Information Act

Since the last Board meeting, the Board has received six (6) requests.

The first was for emails involving an alderman and two companies; we responded that we located no records.

The second was for the recording of the April Board meeting; we responded by sending the open session recording.

The third was for misconduct reported by lobbyists; we responded we had no records.

The fourth was for financial records for an official; we responded by providing the link to statements of financial interests.

The fifth was for emails during a certain period; we responded by providing redacted versions of the records.

The sixth was for records addressing fines; we responded by providing links to the Ordinance and enforcement procedures.