

Executive Director's Report June 10, 2024

Board Members

I'm pleased to report that the two Board member-nominees, The Honorable Bernetta Bush (Ret.) and Sarah Jin, were unanimously approved by the City Council's Committee on Ethics and Government Oversight at its June 6 meeting. Their nominations go to the full City Council for approval on June 12. Assuming they are approved, they will be available for the Board's July meeting. I'm also pleased to report that the re-appointments of members David Daskal and the Honorable Barbara McDonald (Ret.) are in the works.

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://oceprodstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/78f11f46-552f-4b49-b357-cdb7b2f130ec.pdf>.

We were informed 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: i) impose tighter regulations with respect to City Council independent contractors; ii) address 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) address 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) clarify the political activity prohibitions; and v) close a gap in the City's campaign contribution limitations law that allows officers, directors, shareholders, and employees of a person subject to the Ordinance's \$1,500 annual contribution limit to elected officials and candidates to contribute on top of contributions made by the person unless they are reimbursed for that contribution. Our peer cities New York and Los Angeles have already those an analogous gap in their political contribution laws.

Proposals based on Executive Order 2011-2. On June 6, a proposed amendment based on the Board's recommendation to the City Council and Mayor that would codify Mayoral Executive Order 2011-2 was passed by the City Council's Committee on Ethics and Government Oversight by a 13-1 vote. It heads to the full Council for a vote on June 12. I testified at the June 6 meeting, and continue to urge the City Council to enact it into law. If passed, it would prohibit lobbyists (whether registered or not yet registered) from making political contributions in any amount to the Mayor or the Mayor's political fundraising committee, or to any candidate for Mayor or to their committee. It would also bar such contributions from any entity in which a lobbyist has an ownership interest that exceeds 7.5% and for which the lobbyist has lobbied in the past 12 months from making such contributions. Finally, it would subject any lobbyist or person who violates this prohibition to fines of up to three times (3x) the amount of the contribution for the first violation (and afford the contributor the opportunity to cure the violation by having the contribution refunded within 10 days of the of the recipient's or contributor's knowledge of the violation, and for suspension of the lobbyist's registration for 90 days for all subsequent violations. In April 2024, 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 original Executive Order, which provides that "the Board shall not accept a lobbyist registration statement from any person who it finds to have violated this Order." I urge the Mayor to support passage of this legislation and thereby demonstrate ethical leadership. The proposal aims to codify Mayor Emanuel's Executive Order, which extended only to contributions made to a Mayor; it did not address lobbyists' contributions to other elected officials. If there is an appetite to extend this ban to other City elected officials and/or candidates to other elected City offices, the Board stands at the ready to work with the administration and City Council toward passage of that.

Lobbying Law Revisions. Substantial revisions to the City's lobbying laws were passed into law by the City Council on December 13, 2024, and take effect on July 1, 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.

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. We have another class scheduled for members of the non-profit community on July 8.

2024 Statements of Financial Interests

On May 20, as required by law, we posted the names of, and fines assessed against, 72 City employees and officials determined to have violated the law for failing to file their 2024 Statements of Financial Interests ("FIS forms") on or before May 1, 2024. See: .

<https://www.chicago.gov/content/dam/city/depts/ethics/documents/2024%20FIS%20Violations%20Posting.pdf>

Violators are subject to daily \$250 fines until they file. To date, all but four (4) have filed, and we have assessed \$15,500 in fines.

All 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

Mandatory Online Training

To date, approximately: i) 20,500 employees, eight (8) City Council independent contractors, and 24 elected officials have completed the 2024 online training (their deadline is before January 1, 2025); ii) 530 lobbyists have completed their training (their deadline is before July 1, 2024); and iii) 10 appointed officials have completed their training (their deadline is before January 1, 2025). Lobbyists are being sent weekly reminder emails. Those found to have violated the Ordinance are subject to daily \$250 fines until they complete their required training.

Mandatory In-person Classes and other presentations

We have begun in-person training classes for those City officials and employees required to attend them once every four years (about 3,500). To date, approximately 400 City employees and employees have attended. We are conducting classes in our office (on May 29 and 30 and June 4 and 5); we conducted a class for Mayoral staff on May 14 and will do another on June 10 and a third to be scheduled in July; we conducted a class for the Law Department on June 7; and will conduct a class for the Department of Animal Care and Control on July 18; we conducted a class for newly appointed members of the Civilian Commission for Public Safety and Accountability (CCPSA) on May 28; and will have more classes in our office on June 12, 13, 25, 26, 27, and July 9 and 10; and classes for personnel in the IG on September 4 and October 1. We are also working with various City Council offices and bureaus to schedule dedicated classes for them. The deadline for all required to attend is before January 1, 2025.

On June 13, I will make a presentation on our work to the Fortnightly Club of Chicago.

All Board classes and educational programs cover sexual harassment.

Advisory Opinions

Since the Board's February meeting, we have issued 361 informal advisory opinions – another very busy period. The leading categories for informal opinions were, in descending order: Gifts; Classes, Education; Statements of Financial

Interests; Political activity; Campaign Financing; Post-employment; City property; Post-employment; 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 Public Health; Chicago Public Library; Department of Planning and Development; Department of Cultural Affairs and Special Events; Department of Law; Department of Technology and Innovation; and the Department of Aviation.

71% 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 twelve (12). Four (4) of these are on today's agenda for consideration of further action, involving social media postings. 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 845 individuals are registered as lobbyists, and we have collected \$350, 200 in 2024 registration fees. The deadline for filing Q2 activity reports is no later than July 20, 2024.

On June 10, 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 nine (9) 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.

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 seven (7) 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 appears to have been resolved by agreement through which the subject will pay the full \$5,000 fine on a short payment plan; formal approval of that agreement (and its publication) is on today's agenda. The Board had previously voted to proceed to a confidential administrative hearing, and the matter was assigned to ALJ Frank Lombardo. Charges were drafted. The City is represented by the law firm of Kulwin, Masciopinto and Kulwin, LLP. The subject agreed to pay the fine, and the matter is up for a confirmation vote today; once the Board votes to confirm the agreement, we'll post the it. The case will require no further action.

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 voted to pursue a \$60,000 fine at its April 2024 meeting; in the latter case, at its May 2024 meeting the Board found two (2) violations, and voted to pursue the maximum penalty of \$5,000 per violation. The subject has made offers to settle both matters; should the Board vote to reject these offers, it can vote to proceed with confidential administrative hearings in each matter.

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 Board voted at its May 2024 meeting to pursue approve an agreement whereby the subject is paying the \$4,000 fine; it has been posted. The case will require no further action.

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 Board found probable cause as to each subject, and they are entitled to meet with the Board at its June, July or possibly August meeting.

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; at its May 2024 meeting the Board voted 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. At its May meeting, the Board voted to pursue the maximum fine of \$5,000 in each case. The subject in the former case indicated that he wishes to hire an attorney and contest the Board's determinations in a confidential administrative hearing. The subject in the latter case indicated that he will pay the fine.

In the last matter, 24013.IG, a completed investigation was delivered to the Board earlier today. In it the IG concluded that a City employee who was an unsuccessful candidate for City elected office in 2023 misused City-owned property. The matter will be up for a probable cause finding at the July meeting.

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, 2023, 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 request was for the *verbatim* minutes of the 5-13-24 open session meeting; we sent a flash drive of the recording.

The second was for administrative hearing dates related to a specific matter; we denied the request because it was not a proper FOIA request, burdensome, did not identify a record, and was unclear.

The third was for a list of reporting individuals in various City departments required to file 2024 Statements of Financial Interest; we responded by sending a list.

The fourth was for written Board decisions issued on two matters; we responded by providing the link to the Board's website listing ongoing decisions on all matters.

The fifth was an all-City FOIA requesting the requestor's vehicular trip data; we requested aid from the Law Department.

The sixth was the same as the fifth, except with embedded images; we requested aid from the Law Department