

Executive Director's Report November 4, 2024

Board Members

I have heard nothing further from the Mayor's Office regarding potential re-appointments of members David Daskal and The Honorable Barbara McDonald (Ret.), whose terms expired on July 31, 2024. That said, the law is clear that they "hold office until [their] successor [if someone other than themselves] has been appointed and has qualified," per §2-156-310(b).

I again urge the Mayor to re-appoint both David and Barbara, who are dedicated and conscientious Board members.

Staff Note—Richard Superfine

Richard Superfine, our Legal Counsel, is retiring on November 30, after 20+ years of dedicated service to the Board and the City and its citizens. He has been an outstanding colleague. On behalf of a grateful staff, I wish Rich and his family all the best that life has to offer, and trust that, if he decides to become a Boston Red Sox fan (entirely understandable), that he sees the Cubs and BoSox in a World Series!

Amendments to the City's Ethics Laws

Amendments to the Governmental Ethics Ordinance took effect on October 20. They are here:

<https://occprodstoragev1.blob.core.usgovcloudapi.net/matterattachmentspublic/4894e81c-69b4-452c-8796-1067aae5cdd1.pdf>. The amendment:

1. Codifies Mayoral Executive Order 2011-2, which prohibited lobbyists from contributing to the Mayor or Mayor's political committee. The law *now* provides that no lobbyist or any entity in which a lobbyist owns more than 7.5% may contribute in any amount to the Mayor *or to any Mayoral candidate* (or their political committees). The penalty for the first violation is 3x the amount of the contribution (with the 10-day safe harbor provision if the contribution is returned or a return requested); the penalty for any successive violation is a 90-day suspension of their lobbyist registration; and
2. Clarifies the gift restrictions by correcting a scrivener's error in §2-156-142(e); and
3. Clarifies what must be disclosed by filers of annual Statements of Financial Interests as to compensation received in the previous calendar year from any person that was doing business with the City at any time during that preceding year, §2-156-160(a)(2).

We revised our guides that cover political contributions to explain this new law.

The Board's own proposal. 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://occprodstoragev1.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. This is most disappointing; I continue to 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 closed an analogous gap in their political contribution laws.

Note also that, in this package, the Board recommends that the City Council amend its rules so that there is more regulation of lobbying within the office suites for City Council members on the second and third floors of City Hall. We have received reports of lobbyists knocking on doors without being pre-scheduled to be there, and sitting in City Council members' offices, which has upset other City Council members.

Public Financing. As was widely reported, Chair Martin submitted a bill that would provide for public financing of City Council elections. It is O2024-10156, posted here <https://chicityclerkelms.chicago.gov/Matter/?matterId=EDD300D1-E028-EF11-840A-001DD804F643>. We are carefully following the progress of this proposal.

2024 Statements of Financial Interests

To date, all but one (1) individual required to file has filed. We assessed \$15,350 in fines, and made public the names of all 72 City officials and officials found to have violated the law for late filing.

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>

Sister Agencies

We will meet next with our ethics counterparts from the Cook County Board of Ethics, CTA, CHA, CPS, City Colleges, Park District, Metropolitan Pier & Exposition Authority, and RTA, on November 12.

2025 Budget

We are scheduled to have our budget hearing on Saturday, November 9. The Mayor's budget recommendation is for \$981,875, down 3.7% from our 2024 appropriation of \$1,019,835. This reduction pertains to a non-attorney vacancy we have carried and are unlikely to be able to fill in 2025.

2024 COGEL Conference

From December 8-11, I will be in Los Angeles, attending the 46th Annual Conference of the Council on Governmental Ethics Laws. In a typical year, we have funds in our budget to send two staff members, but given the City's financial situation, only one (1) of us can attend in December.

Education

Mandatory Online Training

To date, approximately: i) ~30,200 employees, 25 City Council independent contractors, and 45 elected officials have completed the 2024 online training (their deadline is before January 1, 2025); and ii) 226 appointed officials have completed their training (their deadline is also before January 1, 2025).

11 lobbyists missed their July 1 deadline, and were sent notices of probable cause, affording them the opportunity to explain why they were late. Four (4) were found in violation of the Ordinance, and their fines continue to accrue at \$250 per day.

Mandatory In-person Classes and other presentations

In-person classes began again in May 2024 for those City officials and employees required to attend them once every four years (about 3,500). To date, approximately 1,835 City employees and employees have attended.

Due to ongoing construction in our offices, which has been disruptive, we had to cancel classes on October 29 and 30 and November 6 and 7. We hope to be able to resume in-person classes on November 13 and 14.

We have a class scheduled for new hires in the Mayor's Office on November 20.

After that, we hope to have six (6) remaining classes in 2025, and will resume them at a rate of two (2) classes each week through May 2025. We have held other classes for various City Council members and staff at their offices, and in the Council chambers in City Hall. We have conducted three (3) classes for Mayoral staff (including one on October 16 for the Mayor, Chief of Staff, and several senior Mayoral aides), one (1) for staff of the IG, two (2) for the Department of Aviation, and one (1) each for the Law Department, Department of Animal Care and Control, and the Civilian Commission for Public Safety and Accountability (CCPSA).

All Board classes and educational programs cover sexual harassment.

Advisory Opinions

Since the Board's October 21 meeting, we have issued 147 informal advisory opinions – another very busy period. The leading categories for informal opinions were, in descending order: Gifts; Travel; Outside employment; Political Activity; Lobbying; City Property; and Campaign financing.

The leading City departments from which requesters came in this period were, in descending order: Mayor's Office; City Council; Chicago Police Department/Civilian Office of Police Accountability (COPA)/Community Commission for Public Safety and Accountability (CCPSA); Department of Cultural Affairs and Special Events; Department of Technology and Innovation; Chicago Public Library; and Department of Public Health.

75% 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 7.

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 70 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 922), 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 us, others issue them confidentially and enable requesters to rely on them in the event of an investigation or enforcement.

Lobbyists Filings

Currently 865 individuals are registered as lobbyists, and we have collected \$385,275 in 2024 registration fees.

The deadline for filing Q3 activity reports was no later than October 21, 2024. On October 25 we sent out 35 notices to lobbyists who had not filed, as required by law. They have until November 8 before being subject to a finding that they violated the law, and fines of \$250/day until they file.

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.

Waivers

Since July 1, 2013, the Board has had authority to grant waivers from certain provisions in the Ethics Ordinance. The Board has granted ten (10) and denied three (3) waiver requests. In accordance with the law, all granted waivers are posted here: https://www.chicago.gov/city/en/depts/ethics/supp_info/Waivers.html

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>

There are no such matters currently pending.

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 12 completed IG ethics investigations in various stages of the adjudicative process. 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, awaits a confidential administrative hearing, pursuant to §2-156-392. The City is 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. There are discovery motions currently before the ALJ.

In the second and third, 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 23055.IG, 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 made offers to settle both matters, which the Board rejected. At its June meeting, the Board voted to proceed with a confidential administrative hearing on both matters. The City is represented by Anthony Masciopinto, from the firm of Kulwin, Masciopinto and Kulwin. ALJ Frank Lombardo has been assigned to both matters.

In the fourth, 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. One (1) met with the Board in June, another in July; and a third in September. We have not been able to reach the fourth, who is no longer employed by the City. At the Board's October 21 meeting, it found all four (4) individuals in violation of the Ordinance and assessed \$28,500 in fines. We await responses from the subjects as to whether they wish to pay the fines, attempt to settle, or proceed to a confidential administrative hearing.

In the fifth, 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 *Lindke v. Freed*: https://www.supremecourt.gov/opinions/23pdf/22-611_ap6c.pdf . The IG responded, and the matter has been continued, pending guidance from the federal courts regarding the interpretation of *Lindke*.

The sixth case, 24004.IG was presented by the IG to the Board on February 27, 2024. It involves attempted bribery of a City building inspector. The Board found probable cause at its April 2024 meeting. At its May meeting, the Board voted

to pursue the maximum fine of \$5,000. The subject indicated that he wished to hire an attorney and contest the Board's determinations in a confidential administrative hearing. The matter is assigned to ALJ Frank Lombardo.

In the seventh, Case 24013.IG, a completed investigation was delivered to the Board on June 10. The IG concluded that a City employee who was an unsuccessful candidate for City elected office in 2023 misused City-owned property. The Board found probable cause at its July meeting. At its October 21 meeting, the subject met with the Board. After that meeting, the Board voted to determine that the subject violated the Ordinance and assess a \$1,500 fine. We await a response from the subject as to whether they wish to pay the fine, attempt to settle, or proceed to a confidential administrative hearing.

In the eighth, Case 24015. IG, a completed investigation was delivered to the Board on June 25. The IG concluded that a City employee improperly supervised their relative, in violation of §2-156-130 of the Ordinance. The Board found probable cause at its July meeting. The subject submitted a written response to the Board in an attempt to rebut the Board's probable cause finding. At its September meeting, the Board voted to find two violations and to assess the maximum fine—which is actually \$7,000—not \$10,000. The first violation carries with it a maximum fine of \$2,000 because it occurred prior to September 28, 2019; the second occurred when the maximum fine was \$5,000. The subject has indicated that they will pay the fine, but perhaps request a payment plan.

In the ninth, Case 23016.IG, a completed investigation was delivered to the Board on June 27. The IG concluded that a former City employee violated the Ordinance's post-employment prohibitions, in violation of §2-156-100(b) of the Ordinance. The Board found probable cause at its July meeting. At its September meeting, the Board voted to find a violation and assess a \$2,000 fine. The subject has indicated that they will pay the fine.

In the tenth, Case No. 24018.IG, a completed investigation was delivered to the Board on August 8, 2024. The IG concluded that an elected official from a non-City jurisdiction lobbied the City, in violation of the "cross-lobbying" ban, §2-156-309 of the Ordinance. At its September meeting, the Board voted to refer the matter back to the IG for further investigation. The matter is on today's agenda for a status report.

In the eleventh, Case 24020.IG, a completed investigation was delivered to the Board on August 27, 2024. The IG concluded that a former City employee failed to disclose, on Statements of Financial Interests filed for years 2019-2021, that they had a financial interest in real estate located in the City in four (4) instances. The Board found probable cause at its September meeting, and the subject is entitled to meet with the Board in November or December.

In the twelfth, Case 24021.IG, a completed investigation was delivered to the Board on August 27, 2024. The IG concluded that a former appointed official failed to disclose various board memberships and non-City income received on filed Statements of Financial Interests for years 2017-2019. The Board found probable cause at its September meeting, and the subject is entitled to meet with the Board in November or December.

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 publicly issue an 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 is 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.

Litigation

Czosnyka et al. v. Gardiner et al., docket number 21-cv-3240. The Board and the City of Chicago were previously dismissed out of this case, but, in light of the Supreme Court’s decisions in *O’Connor-Ratcliff v. Garnier* (docket # 22-324) and *Lindke v. Freed*, we are following the matter as it continues. As reported in late August, <https://news.wttw.com/2024/08/30/federal-judge-who-ruled-ald-gardiner-violated-first-amendment-admonishes-him-approaching> the matter is ongoing in light of the relatively involved analysis required under the Supreme Court’s *Lindke* decision.

When we are now asked about when, if ever, City elected officials may block people from their official and/or their personal or political sites, we refer them to the City's Law Department, which can advise them per the Supreme Court's analysis. These questions are no longer ethics questions.

Open Meetings Act/FOIA Challenges

The Board is currently 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) A review of the propriety of adjourning into executive session during the Board's July 18, 2022 meeting under OMA;
- (4) A review of the Board not producing certain records pursuant to FOIA;
- (5) A review of the propriety of the Board's method of taking final action at its April 15, 2024 and May 13, 2024 meetings.

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. That challenge was dismissed by the PAC.

Freedom of Information Act

Since the last Board meeting, the Board has received five (5) requests.

The first request was for records of a former employee; we responded that we were the wrong department.

The second request was for investigations records; we responded that any records we might have are exempt from FOIA.

The third request was for records of minutes; we responded that we had sent this material previously.

The fourth request was for lobbying records; we responded that they were available online, and provided the link.

The fifth request was the same as the third request; we responded that we had already responded.