



BOARD OF ETHICS
CITY OF CHICAGO

To: The Honorable Carrie Austin, Chair, Honorable Members
City Council Budget and Government Operations Committee

From: Steven I. Berlin, Executive Director

Re: **OPENING STATEMENT/FISCAL YEAR 2019 BUDGET**

Date: October 30, 2018

Overview and Mission: Good afternoon, Madame Chair Austin and Members of the City Council Committee on Budget and Government Operations. I thank you for the opportunity to address the Committee.

Now in our 32nd year, the Board of Ethics administers, interprets and enforces Chicago's Governmental Ethics Ordinance (the "Ordinance"). Under the leadership of our Board members and Executive Director, we promote integrity, transparency and accountability in City government by giving confidential advice, educating City employees and officials, vendors, lobbyists, and others subject to the Ordinance, regulating their conduct, and enforcing the Ordinance by adjudicating cases involving violations of the law.

Through our guidance and casework program, we receive requests for and issue more than 4,800 confidential advisory opinions each year (mostly from City employees and officials) on complying with the letter and spirit of the Ordinance and responsibly handling potential conflicts of interests. Through our educational programs, we provide annual training for the entire City workforce, thereby raising awareness of ethics standards, promoting a workplace free from sexual harassment, and helping to foster knowledgeable City workers, lobbyists, and regulated communities. Through our enforcement program, we: (i) issue notices of probable cause where information available to us indicates apparent violations of the Ordinance and no factual investigation by the City's Inspector General ("IG") is needed; (ii) where appropriate, refer complaints alleging violations for factual investigation to the IG or other investigative agencies; (iii) dismiss, settle, or adjudicate any ethics investigations completed by the IG, as well as all Board-generated regulatory actions, and make final, public determinations as to whether ethics violations occurred and impose appropriate penalties; and (iv) enforce ethics training and filing requirements for lobbyists and City employees, officials, and candidates for City elected office, assessing penalties and/or issuing recommendations for corrective action. Through our regulatory program, we foster transparency and accountability by making public thousands of disclosures filed by governmental personnel and lobbyists.

Highlights of 2018 Achievements, and 2019 goals:

1. **EDUCATION:** Educating persons subject to the Ordinance is a critical Board responsibility, which receives scant attention when government ethics issues are discussed publicly. We offer the following:

◆ **Mandatory Annual On-line Ethics Training.** All lobbyists and City officials and employees and officials must complete an annual ethics training program that we design and administer. We revise the program every year and produce separate programs for lobbyists, aldermen and other City personnel. The most recent programs include detailed information on sexual harassment: what it is, how to prevent it, and how to report it so those who engage in it are held accountable. Our programs are models nationwide – Chicago is one of a few jurisdictions requiring annual ethics education for all governmental personnel and lobbyists. With the assistance of Ethics Officers from every City department and aldermanic office, and under our administration, the City again achieved 100 percent (100%) compliance with the 2017 training requirements (31,470 completions). The Board determined that 18 employees and one (1) alderman violated the Ordinance by failing to complete the training by the deadline, and assessed appropriate penalties.

To date, 26,913 City governmental personnel (and eight (8) aldermen) have completed the 2018 training (approximately 87% of the expected total). The deadline to complete the training is 11:59:59 pm on December 31, 2018.

In 2019, we will rewrite these programs and implement technical and visual enhancements. We cover sexual harassment and gifts every year; other topics vary, though many are repeated periodically, such as political activity and post-employment/revolving door. We regularly consult with sister agencies and other governmental ethics agencies around the country on creating effective training programs.

The steady and high numbers of lobbyists and City employees and officials seeking confidential advice from us are markers of the success of our educational programs.

◆ **Mandatory Annual Lobbyist Training.** Registered lobbyists—currently 818, a record—must complete annual training. While not required by law, this training also includes a unit on preventing and reporting sexual harassment, as lobbyists have been reported as victims of this scourge in state capitals nationwide. In 2019, we will again offer this program, emphasizing sexual harassment, gifts and political contributions.

◆ **Other Training.** Since November 2017, we have conducted 44 face-to-face ethics training seminars annually for the approximately 12% of the City’s workforce required by law to attend ethics training every four years (City Council members and their staff, Mayoral staff, and senior executive service employees). We also design and conduct other seminars upon request, for appointed officials, aldermanic offices, and executive branch departments. Since November 2017, more than 1,345 City employees and officials, contractors, and lobbyists have attended ethics classes. We also have designed and posted training programs for incoming and outgoing City employees and officials. In 2019, we will work with the Department of Procurement Services to enhance training for City vendors and persons seeking to be vendors.

◆ **Educational Materials.** Our website includes the current and last seven (7) versions of the Ordinance, our Rules and Regulations (most recently revised as of January 2017), the full text of every formal advisory opinion issued by the Board since 1986 (903 at current count), indexed by subject matter and redacted to preserve confidentiality, a searchable index and summary of these opinions (which we add to as new opinions are issued), 25 educational brochures and “Plain English” guides, and ongoing guides to all Board enforcement matters, naming names as permitted by law. In the past year, we revised all publications, and added three (3) Plain English Guides, including two (2) covering political activity, and one (1) covering the “trade-skill exemption” to the City’s post-employment/revolving door prohibitions. Also included are Board meeting minutes since 2005, and the Executive Director’s monthly reports on agency activity.

For 2019, on a new project, under the direction of the City Council's Committee on Workforce Development, the Board has been working closely with members of the City Council and its various caucuses, the Department of Human Resources, the Office of Inspector General, the Law Department, and the Department of Finance, to put together a "Handbook for Effective and Ethical Operations." This first-time guide will aid City Council members and their staff in operating their ward and committee offices, with useful information on what kinds of expenses can be covered with City funds, serving on outside boards, staff time records, maintaining social media sites, political activity and political office space, and dual employment. We are proud of this multi-departmental accomplishment.

◆ **2019 COGEL Conference Hosts.** I am proud that Chicago will host the 2019 annual conference of the Council on Governmental Ethics Laws ("COGEL"), in December 2019. COGEL, founded in 1978 in the aftermath of the Watergate scandal, when Congress passed the Ethics in Government Act, is the only professional organization devoted to bettering government ethics, campaign financing, lobbying and freedom of information laws, and election administration. Its 600+ members include government agencies in these disciplines from other large U.S. and Canadian cities, nearly all 50 states, Canadian provinces, and the relevant branches of both the U.S. and Canadian federal governments, including the Office of Government Ethics, Federal Election Commission, and House and Senate Ethics Offices. It also has international members from the U.K. Mexico, and Australia, and reform groups, attorneys in private practice, corporate political law compliance professionals, and political science and law professors. Our agency is an active member. We will co-host this conference with our colleagues from the Illinois State Executive Ethics Commission, the Illinois State Board of Elections, and the Cook County Board of Ethics. Hosting entails small expenditures for photocopying, banners, logo design, and "swag" bags for attendees.

The 4-day conference will bring in 450 attendees and take place at the Michigan Avenue Marriott, when stores are stocked with holiday merchandise. In addition, I am a member of the organization's Steering Committee, and could be elected COGEL's President for a term beginning in December 2019. We will serve on the program committee and put together breakout sessions of interest to anyone who follows local or national politics, and try to include members of the Council, the media, and good government groups.

Last, for 2019, we will focus efforts on public outreach and education, and offer speakers at neighborhood association meetings and aldermanic ward nights.

2. CONFIDENTIAL GUIDANCE AND CASEWORK: In my 25+ years of experience with the Board, I have found that the *most* effective way to prevent misconduct and foster a culture of ethics in government is to enable and encourage persons to seek *confidential* ethics guidance and advice *before they act*. We are a trusted, neutral authority that provides this advice to City officials and employees in both branches, and to others subject to City ethics laws. We advise them on complying with both the letter and spirit of these laws, and on handling potential conflicts of interests responsibly. This advisory function, when coupled with regular education, constitutes our most critical responsibility.

Since November 2017, we have issued more than 4,800 confidential advisory opinions: 75% to City governmental personnel (besides the Chicago Police Department, the department to whom the next-highest number of opinions was issued was City Council, then the Mayor's Office). Fifteen percent (15%) were issued to lobbyists or potential lobbyists, and the rest to attorneys, contractors, candidates for elected office, political committees or campaign contributors. Note: members of the public or the media do *not* have standing to receive an advisory opinion unless they are personally involved in the specific situation.

As noted above, we make formal advisory opinions available to the public, in full text, with confidential information removed. They are all indexed by subject matter, with a searchable index summarizing their holdings and providing key words to facilitate searching. Informal advisory opinions do not become public, even in redacted form, though we use them for educational purposes, and to notice trends and alert other departments about potential problems, and to give consistent advice.

Our work would be impossible without ethics officers from every City department and aldermanic office. They are our eyes and ears, referring their personnel with substantive questions and assisting us with required filings and educational requirements. We help them keep current with the law.

3. FINANCIAL DISCLOSURE: The Ordinance requires about 15% of the City's workforce (including aldermen and many appointed officials; the criteria are no longer based on annual salary rate, but on job responsibilities) to file annual Statements of Financial Interests with us. We distribute, collect and make publicly available forms going back seven (7) years from the date of filing. Forms filed in 2011 and after are posted on our website (forms filed in 2010 are available in paper format). Since 2011, filers can also complete and file their forms via a secure website; 87% file this way. Few government bodies enable their personnel to file online *and* make this information publicly available online. In 2018, we found 44 employees and officials in violation of the Ordinance for filing late, and made their names, violations, and fines public on our website, as required by law.

The Ordinance also requires persons who qualify as candidates for elected City office to file Statements of Financial Interests with us within five (5) days of so qualifying. The Board notifies all newly declared candidates via certified and first class mail of their filing requirements. All filed forms are posted on our website – to date more than 129. Candidates who do not file by the deadline stated in their notifications are subject to findings that they violated the Ordinance and fines. Board determinations are made public: to date, one (1) aldermanic candidate was found in violation of the Ordinance; the Board settled the matter for a \$250 fine.

4. REGULATION: The Ordinance requires all persons who lobby City personnel to register annually with us (there is a \$350 annual registration fee and \$75 client fee for each client after the first; we waive these fees for certain non-profits) and file quarterly activity reports. Filings provide detailed information about matters lobbied upon, lobbyists' clients, political contributions, and gifts offered. In 2018, the Board has to date collected \$455,300 in registration fees, about 55% of our 2018 budget allocation.

Shakman-exempt employees and Mayoral appointees must sign ethics pledges binding them to a two-year post-City service lobbying ban. We post a link to the complete list of pledges. We also post hundreds of disclosures made by City personnel each year regarding business travel, gifts, and aldermanic recusals.

In 2018, we added enhancements to the lobbyist database, including a new search interface and a link to view and sort the full datasets made available through the City-wide data portal.

5. CAMPAIGN FINANCING: The Ordinance limits at \$1,500 the amount that registered lobbyists or persons doing or seeking to do business with the City or its sister agencies can contribute in a calendar year to any elected City official or candidate for elected City office, or their political committees. At the Board's urging, in 2013 the Ordinance was amended to strengthen penalties for *both* those who make *and* accept excess contributions. The Ordinance requires that violators' names be made public. Since November 2017,

the Board has commenced two (2) enforcement actions based on apparent violations, each involving excess contributions by persons doing business with the City, and closed three (3) opened prior to November 2017 after the contributor and candidate committee effected refunds of the excess amount contributed.

6. ENFORCEMENT: Since 2013, far-reaching changes to the City's ethics laws and Board operations have been made in enforcement. Many were recommended by the Mayor's Ethics Reform Task Force and enacted to ensure that fairness and due process of law are guaranteed in all ethics investigations and post-investigation procedures.

◆ **Board-Generated Enforcement Actions.** Since early 2017, under the leadership of our Chair, William Conlon, the Board has found probable cause in cases where available evidence indicates that the Ordinance was violated, but no factual investigation by the IG is needed. After finding probable cause, the Board affords subjects (and/or their attorneys) the right to present materials and/or evidence and arguments before the Board prior to when the Board makes a final determination. Where the Board finds, after hearing from the subject, that the Ordinance was violated, it may publicly settle these matters with the subject for fines or other remedies, or, if no settlement is reached, make its determinations public and impose appropriate fines. Final Board determinations are appealable to the Cook County Circuit Court.

Since November 2017, the Board has handled three (3) such actions, not including the three (3) campaign financing matters we closed, as discussed above.

◆ **Ethics Adjudications.** In 2013, the Board became an adjudicative agency: we do not conduct factual investigations of complaints alleging ethics violation. We refer complaints requiring factual investigation to the IG, which may then investigate according to its own rules. After the IG completes an investigation of an Ordinance violation, the Board considers the IG's final investigative report and supporting evidence, then must either dismiss the matter or find probable cause to believe that the Ordinance was violated. These findings are confidential, though the Board may comment on them without identifying the parties. When the Board finds probable cause, it may settle the case (settlements are public, and can involve discipline and/or fines), or the subject may "have his day in court" in a confidential evidentiary hearing before an administrative law judge ("ALJ"). At the conclusion of that hearing, the Board reviews the ALJ's findings, and determines whether the subject violated the Ordinance, and assesses appropriate penalties. These Board determinations are appealable to the Circuit Court. (To date, there have been no such appeals.)

The Board issues written public opinions on all matters that have gone to an evidentiary hearing. If the Board determines, after a hearing, that the subject did not violate the Ordinance, it dismisses the matter and makes public comment without identifying the subject, unless the subject requests to be identified. Summaries of each such matter are posted on our website, consistent with the Ordinance's confidentiality requirements.

IG Investigations. Since November 2017, the IG has submitted three (3) completed investigations to the Board, requesting probable cause findings, and the Board dismissed a fourth that was submitted prior to November 2017 (on the basis that the IG had not completed its investigation within two (2) years of commencing it, as required by law, and the IG did not present evidence from which the Board could conclude that the subject took affirmative action to conceal evidence, which would have extended the two (2) year deadline).

Detailed information about adjudications and enforcement matters and a guide to ethics enforcement procedures are posted on our website and updated regularly. Names are named where permitted by law.

◆ **Enforcement Actions Regarding Training.** In January 2018 we determined that 18 employees and one (1) City Council member had not completed their 2017 ethics training by the January 1 deadline, but assessed no fines, because they all completed the program within the time allotted by law before fines began accruing. We posted all names of violators on our website, per the Ordinance.

In July 2018, we found 27 lobbyists in violation of the Ordinance for failing to complete their training program before the July 1, 2018 deadline. We assessed five (5) lobbyists a total of \$1,200 in fines, and made their names public.

As we do every year, we will revise this training for the 2018-2019 training year.

◆ **Enforcement Actions Regarding Statements of Financial Interests.** In March 2018, 3,719 employees and officials were notified of their requirement to file 2018 Statements of Financial Interests. The deadline for filing was June 1, 2018. As noted above, we determined that 44 employees and appointed officials violated the Ordinance for failing to file on time, and assessed fines as to four (4) of them (these fines are still accruing because the forms remain unfiled and total now more than \$26,000, because these appointed official have not yet filed or resigned their positions). Names of all violators were made public, as required by law. The Board works closely with ethics officers to reach our perennial goal of zero (0) filing violations.

◆ **Enforcement Actions Regarding Lobbyist Registrations.** Lobbyists who fail to timely register or report are subject to fines and/or suspension of their registration; the City may cancel contracts awarded based on unregistered lobbying. As is now well-known in the regulated community nationwide, the Board aggressively enforces these registration requirements. Since November 2017, 178 lobbyists were determined to have violated the Ordinance for failure to timely re-register in January 2018 -- 18 of these lobbyists failed to file by the time fines began accruing and were assessed a total of \$39,000 in fines; two (2) of them never re-registered or properly terminated, so their fines continue to accrue at \$1,000 per day. Should they ever attempt to re-register, they will need to settle their outstanding fines before the Board will allow that. Nine (9) were found in violation for failing to file quarterly reports on time, and two (2) of these were assessed a total of \$2,000 in fines. As per the Ordinance, the names of all these lobbyists and their fines were posted on the Board's website.