



MEETING MINUTES

BOARD OF ETHICS

Tuesday, May 21, 2019

7:00 p.m.

Lorraine H. Morton Civic Center
2100 Ridge Ave, Room 2404

Members Present: Elizabeth Gustafson, Karena Bierman and LJ Ellul

Members Absent: Jennifer Billingsley, Vincent Thomas

Staff Present: Hugh DuBose, Assistant City Attorney

Presiding Member: Karena Bierman, Committee Vice Chair

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1. **Quorum:** Vice Chair Bierman declared that the Board had a quorum, with 3 of 5 members present and called the meeting to order.
 2. **Public Comment:** No members of the public requested to make a statement at public comment.
 3. **Approval of Meeting Minutes:** Vice Chair Bierman stated that the next portion of the meeting relates to approval of meeting minutes.

April 16, 2019 Meeting Minutes Vice Chair Bierman confirmed that everyone had a copy of the minutes; the Board affirmed.

Member Ellul provided comments correcting the spelling of her name.

Member Gustafson moved for the Board to adopt the amended minutes of April, 2019 with revisions incorporated. Member Ellul seconded. The motion passes unanimously.

Vice Chair Bierman moved that the Board go into executive session pursuant to 5 ILCS 120/2(a) and (c). Member Gustafson seconded. The motion passed unanimously.

4. Executive Session: 19-BOE-0001

The Board came out of executive session.

Vice Chair Bierman moved the Board of Ethics find that it lacks jurisdiction to address Complaint 19-BOE-0001. Member Ellul seconded. The motion passed unanimously.

5. Review of updated Draft revised Ethics Ordinance from the Ethics Subcommittee of the Rules Committee.

The Board believes the Code should favor the public good and should provide a clear, fair, and transparent avenue for the public to understand the ethical parameters within which the City of Evanston (the “City”) and its public officials are expected to operate. The Code should provide a clear and defined complaint process and fair approach to address complainant grievances. The Code should allow for the Board to be independent of the City.

The Board is dismayed at the manner, speed, and process with which the Subcommittee acted to revise the current Code. The Board is disappointed that the Subcommittee chose to draft its revisions without invitation to or in collaboration with the Board. Given the Board’s experience and authority in the Code, as well as its relationship with the public, the Board believes it is better positioned to lead efforts for the Code’s transformation.

The Board’s review of the Subcommittee’s proposed revisions identified key elements that suggest the Subcommittee acted without adequate discussion about its ideas or their impacts on public trust and perception. The Subcommittee’s revisions provide no proper framework or specificity for an effective Code and signify a sense of disjointed incrementalism and lack of tangibility. The Board’s review also found that the proposed revisions seek to substantially diminish the Board’s role and influence to assess ethical misconduct – which the Board believes would contribute to further erosion of public trust in the City.

The Board’s review of the Subcommittee’s proposed revisions found an overall lack of clarity, governance and controls measures, and transparency, as well as little or no delineated segregation of duties for key roles. The revisions also add layers of complexity that (1) are antithetical to the Subcommittee’s assertion that it wishes to create a simplified Code of Ethics; (2) will create confusion for the public; and (3) fail to address key flaws in the existing Code. The revisions also are written in a manner that greatly favors the City and public officials with no independence from City oversight.

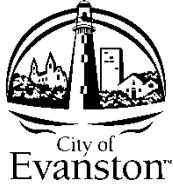
Please see the attached memorandum for the Board of Ethics comments on the draft revisions to the Evanston Code of Ethics.

Vice Chair moved that the Staff Attorney review recording and prepare a memorandum from the Board of Ethics to the Ethics Subcommittee to the Rules Committee detailing the Board of Ethics’ proposed revisions to City of Evanston Ethics Code. The motion was seconded by Member Gustafson and the motion passed unanimously.

6. **Adjournment:** Upon motion by Member Ellul and second by Member Gustafson, the meeting was adjourned with all voting in favor.

Attachment:

Memorandum from the Board of Ethics to the Ethics Subcommittee of the Rules Committee, dated June 12, 2019



Memorandum

To: Ethics Subcommittee of the Rules Committee

From: Board of Ethics

Subject: Revisions to the Code of Ethics

Date: June 12, 2019

Summary

The Board of Ethics (the “Board”) met on May 21, 2019 to review the Ethics Subcommittee to the Rules Committee’s (the “Subcommittee”) proposed changes to the Evanston Code of Ethics. The Board is frustrated and disappointed with the process undertaken to revise the Evanston City Ethics Code (the “Code”). Given the Board’s experience and authority in the City Code, the Board believes it is better positioned to review and rewrite the code. The Board is concerned with the speed that which the proposed revision has been accomplished, the appearance it gives the public and the lack of clarity and controls within the document. Finally, the Board understood City Council wanted a simplified Ethics Code and this draft does not simplify the Code.

Specifically, the Board recommends the following changes to the draft version of the Subcommittee’s proposed changes to the Code.

- 1-10-1 - Purpose
 - Suggest striking Purpose Statement and replacing it with one to two simple sentences. The Board wants to prevent creating potential violations of the Purpose section. Substantive content regarding ethical violations should be, instead, contained in the Code.
- 1-10-2 - Definitions
 - Remove the definition of “Affirmation” as it is not accurate or necessary.
 - Add spouse and cohabitating partner to the definition of “Covered Persons” or reference them specifically and purposefully in relevant sections within the Code.
 - A covered person should also include those doing business with the City, if it is not included in the definition, then it should be specifically and purposefully included in relevant sections within the Code
 - Definition of Hearing Officer:
 - Clarify whether the “Hearing Officer” and “Special Counsel” are intended to be the same role if they are two separate roles, please define each’s duties and provide a framework for how they should collaborate.

- If the Hearing Officer and the Special Counsel are the same person, then the Code should be updated to consistently refer to that person as either the “Hearing Officer” or “Special Counsel”
 - Define the selection process and selection criteria for the Hearing Officer, this is especially important to build public trust
 - Clarify the meaning of and procedures for “conferences for settlement or simplification” in section (2)
 - Strike the word “affirmation” in Section (3)
 - Please confirm if it is the intent of the Subcommittee, through sections (4) through (9) to essentially strip the Board of Ethics of its responsibilities
 - Define what costs are contemplated in Section (9)
 - Strike the definition of “Ethics”
 - Updated the definition “persons doing business” to “persons or entities doing business”
 - Board would like further explanation on why the amount of \$10,000 was selected as the threshold for this section
 - Updated the definition “persons seeking to do business” to “persons or entities seeking to do business”
 - Change the term “Political Activities” to “Campaign Activities”
 - Simplify the definition of “Political Activities” The definition is too specific, but also includes other items via the “but not limited to” clause. It does not need to be so specific. Sections (a)-(e) unnecessarily limit an employee’s political activities outside of work
 - Protected Activities
 - Remove “threat” and replace it with “request” in the definition of protected activities
 - Make the standard in (a) objective instead of subjective.
 - Injury should be inquiry?
 - Strike the definition of Special Counsel and consolidate into the definition of Hearing Officer.
- 1-10-3 – Requirements for Financial Disclosure and Affiliation
 - (C) Include spouse and cohabitating partner’s occupation as required information in a financial disclosure
- 1-10-4 – Campaign Contribution Limits
 - Strike this section, it is covered in other places in the City Code and would be misplaced here.
- 1-10-5 Requirements with Respect to Conflicts of Interest and Standards of Conduct
 - (B) - Include activities that give “appearance of impropriety” to list of reasons an elected or appointed person should recuse themselves.
 - (E) - Suggested including spouses and cohabitating partners in this section, as they could create the appearance of impropriety and/undue pressure on decision-makers
 - (F) Recommend simplifying this section (See campaign activities above)
 - (H) Suggested including spouses and cohabitating partners in this section

- (K) In all practicality, this is an unenforceable provision, a concept better suited for the representation agreement, is covered by the ARDC and Illinois rules governing attorneys, and should be stricken.
- 1-10-6 – Official Misconduct
 - Suggest that covered people using any of the exceptions 1-10-6 must give notice to the hearing officer contemporaneously with accepting the gift.
 - (B)(7) – change from subjective standard to an objective or reasonable person standard
 - (D) - Suggest adding “or any activity” after “transaction”
 - (H) - This section (City’s Healthy Work Environment Policy) relates to another policy that is not within the purview of the Board of Ethics. It should be adjudicated separately. The Board recommends removing section H.
- 1-10-7 – Gift Ban
 - Suggest simplifying this section A – C, it references the same items in multiple sections. Just summarize what should be banned.
 - Require that if any individual wishes to use any of the exceptions claimed, then that person must have provided notice to the Hearing Officer or Board of Ethics of the gift. If they have not done so within a period of time after receipt, then they cannot later use the defense.
 - Use Hearing Officer consistently if it is one person.
- 1-10-8 – Whistleblower Protection
 - The definition of “protected activity” requires the covered person to “reasonably believe [the action] is a violation of a federal, state or city law, rule or regulation.” The way section 1-10-8 is written, would allow retaliation if the covered person does not reasonably believe he or she committed a violation.
 - Does not address the covered person *causing* someone else to take action, therefore amend to include “or causes another to take” before retaliatory action
- 1-10-9(- Ethics Training
 - (A)(2) Clarify what the remedy or punishment is for those who do not take required ethics training
 - Recommend making training “compulsory”
- 1-10-11 – Board of Ethics Establishment, Membership, Qualifications, Terms of Office, and Organization
 - Strongly recommend making the requirements and term lengths of the Board of Ethics consistent with other boards in Evanston.
 - Suggest changing “may” to “shall” in section (E).
- 1-10-13 – Powers and Duties
 - This section effectively dissolves the Board of Ethics. Please clarify if it is the Subcommittees’ intent to strip all powers from the Board.
 - (A) – clarify if Hearing Officer or Board of Ethics is conducting investigations
 - Suggest moving 1-10-15 to section 1-10-13(F)
- 1-10-14 – Board of Ethics Special Counsel

- Rename this section “Board of Ethics Hearing Officer” rather than “Special Counsel”
- Request that the Hearing Officer be chosen by the Board of Ethics
- (C) - Request that the Board of Ethics approve the Hearing Officer/Special Counsel’s proposed rules
- Request that the Hearing Officer notify the Board of Ethics when a Hearing Officer initiates an Ethics inquiry.
- The Board of Ethics should also review the Hearing Officer’s rules pamphlet.
- Requests that more information be provided on how a Hearing Officer is selected. The selection process should be incorporated into the Code to increase transparency.
- 1-10-16 – Formal Complaints and Findings of Violation
 - (C) - The Advisory Panel does not have the authority to investigate ethics complaints, this section other sections should be updated or this should be deleted I’m not sure this comment is correctly cited or correctly interprets the proposed code.
 - (D)
 - Suggest replacing “agreeing” with “finding”
 - The scope of the “investigation” needs to be further defined.
 - Suggest adding a sentence indicating that the investigation should occur “as soon as practicable.”
 - (F)
 - Change the length of time from seven to ten business days
 - (G)
 - Remove the term “timely objection” since all objections will need to be written submissions.
 - (H)
 - This section contrasts with other sections of the Code where the Hearing Officer makes the final decision.
 - The Board of Ethics recommends the Subcommittee reconsider allowing City Council to serve as the appellate authority.
 - Every single ethics complaint will be appealed without some standard for appeal.
 - It could also give a bad appearance if it a complaint against an elected official goes before the council if they are on the council.
- 1-10-17-1 – Creation of Ethics Administration Adjudication
 - Sections A and B should be reconsidered in light of the comments above or be struck
- 1-10-17-3 – Subpoenas
 - Consider whether the Hearing Officer has the authority to issues subpoenas and, if so, does the City wants to delegate that authority to a contract employee?
 - Consider whether authority exists to subpoena covered persons
 - Consider how subpoenas would be enforced

- Consider that issuing subpoenas may have a chilling effect for unrestricted positions
- (D)
 - Suggest removing references to “orders” throughout the code since “orders” implies the involvement of a court or magistrate.
 - Consider whether Hearing Officer should really have the power to review the validity of his/her own subpoenas without any oversight. This is too much power for one position and creates potential for abuse.
- 1-10-17-6 – Documentary evidence
 - Consider if the Board of Ethics should weigh the evidence
- 1-10-17-8 - Continuances
 - Consider deleting the first sentence as it is self-evident
 - Consider moving the power to continue to the Board of Ethics
- 1-10-17-9 – Administrative Hearing Procedures Not Exclusive
 - Define “Administrative Hearing Officer” – is this intended to be the same role as “Hearing Officer?”
 - Move the mechanics of City Council voting on the appeal (currently in subsection B) to 10-17-8
- 1-10-18 – Referral of Final Opinions of the Ethics Board to the City Council for Final Action
 - (C) – Define “Final Settlement.” Term is capitalized, but not defined.
- 1-10-19 – Enforcement and Penalties
 - (A) move the following section to 1-10-18 “ If any elected official, other than the mayor, is the subject of the alleged ethical violation, the Mayor shall also have a vote on discipline. The Mayor and Aldermen may not vote on discipline in which he or she is the subject of the alleged ethical violation”