



BOARD OF ETHICS MEETING

Tuesday, September 17, 2019

7:00 p.m.

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

AGENDA

1. CALL TO ORDER / DECLARATION OF QUORUM

2. PUBLIC COMMENT

3. APPROVAL OF MEETING MINUTES

August 20, 2019

4. EXECUTIVE SESSION

Jurisdictional Hearing for Complaint 19-BOE-0004

The Board will enter executive session pursuant to 5 ILCS 120/2(c)(4) and (15)

5. OLD BUSINESS

Update on revisions to the Code of Ethics and Board of Ethics Rules

ADJOURNMENT

Next Regularly Scheduled Meeting:

October 15, 2019 at 7:00 p.m. in Room 2404



MEETING MINUTES

BOARD OF ETHICS

Tuesday, August 20, 2019

7:00 p.m.

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

Members Present: Jennifer Billingsley, Elizabeth Gustafson, Karena Bierman and LJ Ellul

Members Absent: Vincent Thomas

Staff Present: Hugh DuBose, Assistant City Attorney

Presiding Member: Jennifer Billingsley, Board Chair

1. **Quorum:** Chair Billingsley declared that the Board had a quorum, with 4 of 5 members present and called the meeting to order.

2. **Public Comment:** The Board opened up the meeting for public comment. Mike Vasilco, Trisha Connolly, Darlene Cannon, Albert Gibbs, Clare Kelly, and Allie Brennen made public comments supporting Albert Gibbs and Trisha Connolly's complaint.

Mike Vasilco also asked the Board for the date of the next Ethics Subcommittee to the Rules Committee's meeting.

3. **Approval of April 16, 2019, Meeting Minutes:**

Chair Billingsley requested that the word "formatting" be removed and Member Ellul provided suggestions correcting scrivener errors in the minutes.

Member Bierman moved for the Board to adopt the amended minutes of April 16, 2019, with revisions incorporated. Member Gustafson seconded. The motion passes unanimously.

4. **New Business**

Complaint 19-BOE-004

Chair Billingsley indicated that the Board does not have to go into executive session and asked for discussion amongst the Board members.

Member Bierman stated the reason the Board goes into executive session to protect the Respondent from unfounded complaints if the Board determines it does not have jurisdiction to hear the complaint. The facts may be out in this case, but the Respondent still has a reasonable expectation that the complaint is confidential.

Staff Member DuBose advised that going into executive session is required under Evanston City Code Section 1-10-8(E).

Chair Billingsley asked the members to consider whether the Board can disregard Evanston City Code Section 1-10-8(E) and believes it has been disregarded before. Further, the Complaint has been disclosed and the alleged behavior took place in the public. She is inclined to proceed to hear the jurisdictional complain in open sessions. All of the facts are out there, so the Board can move forward.

Chair Billingsley stated the purpose of the jurisdictional hearing is to determine:
(1) Is or was the respondent a person subject to the Code of Ethics as defined herein at the time of the alleged ethical misconduct; and (2) is the ethical misconduct complained of covered by this Chapter.

Chair Billingsley noted Staff distributed the Confidential Report pursuant to the requirements of the City Code.

Chair Billingsley noted that Mr. Gibbs and Ms. Connolly requested that their complaints be treated as one complaint.

Chair Billingsley stated that Alderman Braithwaite is an Alderman and is covered by the code.

Member Gustafson says she watched the meeting and rewatched the Ald. Braithwaite's comments and found the situation to be confounding. She did not see a linear path from public comments to his response. She states she is reluctant to say what she is thinking. While she understands his comment, she does not see how it is a comment related to public comment.

Member Ellul states she watched the public comment and Ald. Braithwaite's comments. She feels Ald. Braithwaite's comments where not directed at a specific person who made a public comment. He was uttering his opinion to everyone. When a public official makes comments from the dais, they run the risk of offending someone. Member Ellul though Ald. Braithwaite's comments were inappropriate.

Chair Billingsley asks even if the comments were inappropriate, offensive, and uncivil, is that enough to trigger a code of ethics violation? She does not see without a hearing how she can make a finding. How the comments were received goes to whether there was intimidation, an abuse of authority, or impartiality.

Member Bierman says did it would be better to have discussion at hearing than to find no jurisdiction.

Member Ellul moved that the Board find it has jurisdiction over 19-BOE-004. Member Gustafson seconded the motion. The motion passes 3-0 with Member Bierman abstaining.

Chair Billingsley moved for a 5 minute recess. Member Bierman seconded the motion. The motion passes 4-0.

Financial Disclosures:

The Board reviewed all financial disclosures filed with the City and identified forms missing information and forms that should receive cautionary letters. The Board identified forms with potential conflicts and directed Staff to issue cautionary letters to those individuals.

Code of Ethics Re-Write:

Staff read email from Ald Wilson requesting comments the Board of Ethics provide comments on the draft Board of Ethics Rules to the Ethics Subcommittee of the Rules Committee. After receiving the Board of Ethics' input, the Ethics Subcommittee of the Rules Committee will schedule its next meeting.

The Board made discussed changes to the proposed Board of Ethics Rules.

Member Bierman made a motion to reiterate the Boards' concerns in a memo transmittal to the Ethics Subcommittee to Rules Committee regarding term limits modifications in the rules and the codes and question: (1) why the term limits are different from any other committees; (2) if the Ethics Subcommittee to the Rule Committee has considered the challenge of finding qualified candidates who are willing and able to serve on the Board of Ethics; (3) whether they considered the learning curve on serving on the board of ethics; and (4) whether they have considered how long a complaint takes matriculate through the Board's process and the effect of changing members each year will have on existing complaints. Member Ellul seconded and the motion with all members voting in favor.

The Board made discussed changes to the updated draft Code of Ethics.

Member Bierman made a motion to transmit in a memo transmittal to the Ethics Subcommittee to Rules Committee Board recommends the Board's recommendation to split the Code of Ethics and the Rules so that everything that deals with process and procedure should go into the Rules and everything that what is a violation of the ethics

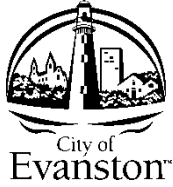
code goes in the Code of Ethics. Member Ellul seconded and the motion passed with all members voting in favor.

The Board requested their changes be incorporated into a memo to the Ethics Subcommittee to the Rules Committee.

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

Attachment:

Memo from the Board of Ethics to the Ethics Subcommittee of the Rules Committee, dated September 11, 2019.



Memorandum

To: Ethics Subcommittee of the Rules Committee

From: Board of Ethics

Subject: Revisions to the Code of Ethics

Date: September 12, 2019

Summary

The Board of Ethics (the “Board”) met on August 20, 2019 to review the Ethics Subcommittee to the Rules Committee’s (the “Subcommittee”) proposed changes to the Evanston Code of Ethics and proposed Rules for the Board of Ethics. The Board recommends the changes in this memo to the draft version of the Board of Ethics Rules (the “Rules”) and City Code of Ethics (the “Code”).

First, the Board recommends splitting the Code of Ethics and the Rules into two separate documents so that all provisions dealing with process and procedure can be found in the Rules and all provisions explaining what is a violation of the Code of Ethics is in the Code.

Draft Board of Ethics Rules

- Remove Section I. A. “Intent”
- Update definitions in Section I. B. so that they are consistent with the definitions in the new Code.
- Remove Section I. C. Board Members – This section is duplicative of the Code
 - The Current Board of Ethics is concerned that the changes to the term limits length of Board of Ethics Members will negatively impact the Board of Ethics. The current Board of Ethics would requests that the Subcommittee to Rules Committee consider: (1) that term limits are different from any other committees; (2) the challenge of finding qualified candidates who are willing and able to serve on the Board of Ethics; (3) the learning curve on serving on the Board of Ethics; and (4) how long a complaint takes matriculate through the Board’s process and the effect of changing members each year will have on existing complaints.
 - The Board recommends increasing the number of members from five to nine.

- Add a section to the rules that explains to citizens how to file a complaint. The Board receives a number of questions from citizens on this process. It would be helpful if the Rules explained the process for filing a complaint.
- Identify which staff members will be responsible for providing administrative support for the Board Of Ethics.
- Section E: Clarify that any business that could be conducted at a regular meeting, can be conducted at a special meeting

Draft Code of Ethics

- Replace “chief investigative officer” with “Counsel for Board of Ethics”
- 1-10-5: replace “political activity” with “campaign or political activity”
- 1-10-13: Add section (I) granting the Board of Ethics the power to approve the Special Counsel’s rules and regulations
- 1-10-14: Add a requirement that the Special Counsel must be a licensed member of the Illinois Bar, in good standing, with demonstrable appropriate experience
- 1-10-14(C): Add a requirement that the Special Counsel’s rules and regulations are approved by the Board of Ethics
- 1-10-16: Clarify what it means for the Special Counsel to “compile” evidence.
 - Will the special counsel be able to review City files, interview witnesses, or collect any other data?
- 1-10-16(C): Add Vice Chair of the Board of Ethics to the advisory panel to avoid a tie.
- 1-10-16(G): Add “obtain information as needed” to the last sentence of the last paragraph.
- 1-10-16(H): Make the last sentence its own section 1-10-16(I)
- 1-10-17-5: Change reference from “Hearing Officer” to “Special Counsel
- 1-10-17-5: Change “Ethics Board Case in Chief” to “Complaint Case in Chief.” Also, under the current code, the Complainant presents their case. The current code does not speak to who presents the Complainants case. Would it still be the Complainant? The Code/Rules should specify who is presenting the case.
- 1-10-17-8: Change the authority to grant continuances from the Hearing Officer to the Board of Ethics Chair.

Ethics Complaint Against Alderman Braithwaite
August 5, 2019

We believe Alderman Braithwaite demonstrated 1) **Abuse of Power** (*Violation of Code of Ethics 1-10-4 Standards of Conduct*), 2) **(a breach of) Impartiality** (1-10-4 Standards of Conduct), and 3) **Intimidation by a Public Official** (*Violation of 720 ILCS 5/12-6 from Ch. 38, par. 12-6*) during the City Council meeting of July 15, 2019. From the dais, during City Council meeting on July 15, 2019, Alderman Braithwaite threatened, ridiculed and intimidated “white people” against publicly supporting their Black friends and fellow residents and from engaging in discussions around racism.

The infractions as described in Evanston’s Code of Ethics:

1) ***Abuse Of Power Of Office.*** No officer or employee shall, use the prestige, power or influence of his/her office or employment to engage in any transaction which is, or would to a reasonable person appear to be, in conflict or incompatible with the proper discharge of his/her official duties, or which impairs, or would to a reasonable person appear to impair, the officer's or employee's independence of judgment or action in the performance of official duties. This prohibition shall extend to any use of official position or employment for a purpose that is or would appear to a reasonable person to be for the private benefit of the officer, employee or any member of their family, rather than primarily for the benefit of the City.

2) ***Impartiality.*** Every officer and employee shall perform his/her duties with impartiality and without prejudice or bias for the benefit of all citizens of the City.

3) ***Intimidation by a Public Official***

The standards of (the Code of Ethics) are: *intended to supplement and comply with the provisions regarding municipal officers in 65 ILCS and 50 ILCS 105/1 et seq., and any other state statutes or ordinances of the City relating to ethical conduct for City officers and employees.*

The obligations of (the Code of Ethics) shall not be limited to the provisions of the state statutes specified herein, nor shall the failure to include in this Chapter any provisions of a state statute release officers and employees of the City and other covered individuals from obligations, responsibilities and penalties imposed by state law.

(720 ILCS 5/12-6) (from Ch. 38, par. 12-6)

Sec. 12-6. Intimidation.

(a) A person commits intimidation when, with intent to cause another to perform or to omit the performance of any act, he or she communicates to another, directly or indirectly by any means, a threat to perform without lawful authority any of the following acts:

(5) Expose any person to hatred, contempt or ridicule

We feel Alderman Braithwaite violated the Evanston Code of Ethics when, as Alderman, from the dais, during a City Council meeting, Alderman Braithwaite used intimidation as he scorned and ridiculed white residents by exposing them to contempt and ridicule from his position of power with the intent to silence all “white folks” from publicly discussing concerns surrounding racism in Evanston. Video here: [July 15, 2019 City Council](#) (2:50:55)

Ald. Braithwaite, during the City Council meeting, from the dais, scorned, ridiculed and discouraged white residents from expressing concerns about racism and attempted to alienate White residents from Black residents when he said;

“I really sit here and have a difficult time when I hear white folks admonishing me and using the word racism like it's some coin phrase that you just came up with. Unless you've walked in my shoes or any one of us blacks sitting back here I suggest you keep that to yourself. You want to have that conversation internally, I'm a big fan of that internal versus external conversations. Do that.”

Mr. Braithwaite did not make these comments in private, as a private citizen between individuals. He made these comments in his position as an Alderman during a City Council meeting.

In addition, when the Council adjourned, a white resident politely approached Ald. Braithwaite in Council Chambers to discuss his comment (above), and Alderman Braithwaite abruptly cut off the resident (Ray Friedman) shouting at him saying: **“Shut up, just shut up.”** This response to Mr. Friedman only reinforced the intimidating effect of Ald. Braithwaite’s comments from the dais and his intent to silence white residents and to cast a chill on First Amendment protected speech and to sever their public support of black residents.

We assume Mr. Braithwaite is aware of the countless number of white freedom marchers and protesters in the 50’s and 60’s who publicly supported the civil rights movement against segregation and other institutional racist policies. (Some were brutally murdered for standing and protesting against racist institutions and segregation such as Rev. Bruce Klunder, Rev. James Reeb, William Lewis Moore, Andrew Goodman to name a few.) We have to wonder if Mr. Braithwaite thinks those white people who protested alongside Blacks should have just stayed home and **“kept to themselves”** and kept the conversation quiet and **“internal?”** There were those of that mindset during this period in history who wanted white people to stay home and to remain silent on the

issues of racism. We question the intention and the goal of Mr. Braithwaite's spiteful comments on the dais. We can't help but wonder if perhaps Mr. Braithwaite wasn't doing the bidding of those who want to undermine support given to aggrieved Black community members and to weaken their cause and broader support. He seemed intent on casting a chill and fear among white people who sympathize with Black residents' concerns and speak in support.

These words spoken here by Professor Curtis Austin in this TedTalk titled: "Black Panthers White Lies," about the importance and need for collaboration among races and ethnic groups to resolve issues of institutionalized racism describe why we feel this complaint and an appropriate recommendation in response is so very important. The entire 14 minute video is highly valuable however starting at about **12 min. 30 seconds until the end**, Mr. Curtis

<https://www.youtube.com/watch?v=KPN8LHVeFYA>

This uncivil and hostile behavior of Mr. Braithwaite should not be tolerated. We believe we have a Code of Ethics, in part, to protect residents from being publicly mocked, ridiculed and intimidated by officials in their positions of power on the dais.

Thank you for your attention to this matter.