



COMMENTS FROM THE CHICAGO COUNCIL OF LAWYERS ON PROPOSALS TO ESTABLISH A CIVILIAN OVERSIGHT COMMISSION FOR THE CHICAGO POLICE DEPARTMENT (CPD) AND RELATED AGENCIES

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I. INTRODUCTION

The Chicago Council of Lawyers ("Council") provides these comments on the two pending ordinances that would establish a Community Commission for Public Safety and Accountability (hereafter, "Commission") with powers over the Chicago Police Department ("CPD"), the Civilian Office of Police Accountability ("COPA") and the Chicago Police Board. They are (1) the January 2021 ordinance proposed jointly by the Chicago Alliance Against Racist and Political Repression

(CPAC) and the Grassroots Alliance for Police Accountability (GAPA) and (2) the May 2021 ordinance proposed by Mayor Lori Lightfoot. We refer to the former as the “Community Groups” ordinance or proposal and to the latter as the “Mayor’s” ordinance or proposal.

Both ordinances propose the creation of three member “District Councils” that would be elected in each of the City’s 22 geographic Police Districts. A subset of those District Council members would thereafter nominate Commission members, who would be selected by the Mayor from the list of nominees and approved by the City Council. The ordinances differ as to the details of the election process for District Council, as described below.

**This memorandum by the Chicago Council of Lawyers highlights the key differences<sup>1</sup> between the two ordinances and makes recommendations for resolving those differences. The Council endorses selected sections from each ordinance, as reflected below in each portion of this memorandum, but does not take a position as to which proposal better suits community needs as a whole.**

We divide our analysis of the two ordinances into two parts. First, we summarize how each ordinance addresses key provisions that any Civilian Oversight Commission charter should include, and we give the Council’s analysis of and position on these provisions. Second, we make recommendations on the powers that each ordinance would give to the Commission. Finally, we note the possible impact of a proposed public referendum that would further alter the Commission’s proposed powers.

## **II. COUNCIL’S POSITIONS ON KEY ORDINANCE TERMS**

### **A. QUALIFICATIONS AND DISQUALIFICATIONS OF COMMISSION MEMBERS**

Both ordinances specify the qualifications required of a candidate for the Commission in largely similar terms. Both require at least five years’ professional experience in law, public policy, social work, psychology, mental health, law enforcement, community organizing, civil rights, advocacy on behalf of immigrants and undocumented people or advocacy on behalf of LGBTQIA people; reputation for integrity, professionalism, and judgment; a history of leadership and community involvement; the ability to engage with other persons with a stake in policing; and a history of working collaboratively in groups.

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<sup>1</sup> This memorandum does not summarize or opine on provisions in the two proposed ordinances that are essentially the same, such as the provisions concerning annual performance reviews of the CPD Superintendent, the head of COPA and Police Board members.

The Community Groups' ordinance also allows three Commissioners to be exempted from the professional experience requirement if they or a family member have experienced police misconduct (Sec. 2-82-115(e) (2)); gives examples of conflicts of interest that must be disclosed (Sec. 2-82-115(e) (4)); and requires that two Commissioners be between the ages of 18 and 24. (Sec. 2-82-115(e) (8)). The Mayor's ordinance would allow two Commissioners between the ages of 18 and 24 to be exempted from meeting the professional experience requirement. (2-80-040(b)).

The Community Groups' ordinance provides that no Commissioner shall have been an employee of the CPD, COPA, or the Police Board in any of the 3 years proceeding their appointment. (Section 2-80-040 (b)(9)); the Mayor's ordinance provides the same but adopts a 5-year period. (Sec. 2-80-115(e) - last paragraph).

### Council Comments

The Council believes that the ordinance should permit up to a total of 3 Commission members who do not have to meet the professional experience requirements, and that it should provide that those three members can but are not mandated to include prior victims of police misconduct and individuals between the age of 18 and 24 old. Doing so would strike the appropriate balance between an adequately experienced and a broadly representative Commission. The Council agrees with the Mayor's proposal for a five-year disqualification period for former employees of CPD, COPA and the Police Board, as that would be consistent with our recommendation for the similar requirement for the COPA Administrator and Police Board Members, noted below.

## **B. DISTRICT COUNCILS**

Both the Community Groups' ordinance (2-82-120,-125 &-130) and the Mayor's ordinance (2-80-070) provide for the election of three member District Councils in each of the City's 22 geographic police districts. The provisions are largely the same, with the following exceptions:

The Community Groups' proposal requires that District Council members be registered Chicago voters, and that only registered voters may vote in the elections for District Council members. (2-82-130(d) & -130(e)(3)). The Mayor's proposal does not require District Commissioners to be registered voters and requires the Commission to adopt a procedure for conducting elections for District Council members that does not require proof of US citizenship to vote for or serve on the District Councils. (In other words, undocumented non-citizens could serve on the District Councils and vote for District Council members).

Both ordinances list prior criminal convictions that would disqualify a person from serving on the District Council. The Community Groups' proposal includes the vague term "infamous crime" and then lists "bribery, perjury or other felony" (2-82-130(3)(4)). The Mayor's proposal by comparison is more specific. It does not use the term "infamous crime," but lists "theft, bribery,

embezzlement, extortion, perjury or other corruption-related crime,” as well as forcible felonies and Class 4 or more serious felonies as defined in the Criminal Code (2-80-070(b)(3)).

### Council Comments

The Council recognizes the increased inclusiveness of the Mayor’s provisions for electing District Council members but has serious doubts as to the wisdom and likely delay of attempting to create a parallel voter registration system that the Chicago Board of Elections would have to administer, to permit undocumented non-citizens to vote. If a change is to be made as to who is eligible to vote in City elections of any or all types, that proposal should be separately proposed and adopted, rather than attempting to “backdoor” such a change through the vehicle of this ordinance, particularly given the risk of thereby significantly complicating and delaying the initiation of this Commission. However, the Council sees no problem with permitting undocumented non-citizens from serving as District Council members.

With respect to disqualifying crimes, the Mayor’s list is more specific than the Community Group’s proposal and provides a better starting point for negotiations and revisions on this issue. As a general matter, the Council believes that the list of disqualifying prior crimes should be kept to a minimum, both because citizens generally should be able to participate in civil society once they have served their time and because such individuals often have special insights as to injustices in the law enforcement system.

## **C. INTERIM APPOINTED COMMISSION**

The Community Groups’ ordinance does not specify a start date but calls for election of District Council members to occur the first week in November of even-numbered years. Adhering to that schedule, the first District Council members would be elected in November 2022 and the first Commission members would thereafter be selected sometime in 2023 (2-82-130(d)).

In contrast, the Mayor’s proposed ordinance calls for an “interim Commission” to be appointed in January 2022, consisting of five interim Commissioners appointed by the Mayor and two by the City Council (2-80-040(a)). The interim Commission would be in place until elections could be held for the initial District Council positions (which could conceivably take some time if coupled with the Mayor’s suggestion to set up a parallel voter registration system allowing undocumented non-citizens to vote), and only then, after the District Council members had been elected, could they select the actual Commission members.

### Council Comments

The Council believes the proposal to create an “interim” appointed Commission risks seriously undermining the public’s perceptions about the independence of the Commission but understands the desire to act relatively quickly. The Council believes a more appropriate way to

proceed would be to schedule a special election for the initial election of District Council members in the winter of 2021, and to extend their initial terms by a year. Assuming the existing system of voter registration is utilized, such an election schedule would seem possible. The elected District Council members could then select the actual Commissioners early in 2022 and the Commission could be up and running by mid-2022.

#### **D. NUMBER OF COMMISSIONERS**

The Community Groups' Ordinance proposes a nine-member Commission, with the terms for half of the positions staggered by a year. The Mayor's Ordinance proposes a seven-member Commission, with half the positions staggered by a year.

##### *Council Comments*

Because some actions by the Commission would require a two-thirds majority, such as the provisions related to votes of no confidence in the CPD Superintendent, the head of COPA and members of the Police Board (CGs' Ord.: 2-82-135(b); -140(e), -145(b); Mayor's Ord.: 2-80-090), the Council believes that a nine-member Commission makes more sense. Having a seven-member board with a two-thirds requirement would make obtaining such a majority unduly burdensome.

#### **E. BUDGET**

Section 2-80-160 of the Mayor's ordinance provides that the annual budget for the Commission and District Councils should not be less than 0.075 percent of the annual appropriation of all non-grant funds for the Police Department. Section of 2-82-115(i) of the Community Groups' ordinance sets that figure at .22 percent.<sup>2</sup>

##### *Council Comments*

The Council endorses the notion of a guaranteed floor, but takes no position on the amount, as we are not able to estimate the minimum required budget for the Commission and District Councils.

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<sup>2</sup> The Police Department budget generally runs between \$1 billion and \$2 billion dollars; .22% of a \$1.0 billion budget would be \$ 2.2 million, while .075% of a \$1.0 billion budget would be \$750,000.

### III. COUNCIL'S POSITIONS ON SPECIFIC POWERS OF THE COMMISSION

#### A. HIRING THE CPD SUPERINTENDENT

Under the Chicago Municipal Code, the Chicago Police Board currently has the power to nominate three candidates for the CPD Superintendent (when that position is vacant) and submit them to the Mayor for Selection (Municipal Code, Sec. 2-84-030(1)). Both proposed ordinances would move this power to the Commission.

##### Community Groups' Ordinance

The Community Groups' ordinance provides that when the Superintendent position is vacant, the Commission shall submit three candidates to the Mayor. Thereafter, the candidates shall answer questions and present their credentials and strategic plan for the superintendent position at four public hearings. After that, the Mayor shall select one, who must then be confirmed by the City Council (Section 2-182-135 (a)).

##### Mayor's Ordinance

The Mayor's ordinance provides that when the Superintendent position is vacant, the Commission, after having conducted a nationwide search and having held four public hearings, shall submit three candidates to the Mayor, who shall select one. After the Mayor has submitted that name to the City Council, the City Council Committee on Public Safety shall hold a public hearing on the candidate, allowing for public input. After the City Council has confirmed the Superintendent, the Commission shall hold four public hearings at which the public may question and provide recommendations to the Superintendent (Section 2-80-080).

##### Council Comments

The two proposals differ in only minor respects. We favor the Mayor's ordinance because it allows the public to communicate with the Superintendent at four public hearings after he or she has been selected.

## B. HIRING OF OTHER KEY OFFICIALS

### Community Groups' Ordinance

The Community Groups' proposal provides that in the event of a vacancy in the position of Chief Administrator of COPA, the Commission shall engage a nationally recognized search organization to identify ten candidates, who meet the qualifications for the position already spelled out in the COPA Ordinance, 2-78-115. The Commission selects the three most qualified candidates and submits them to the Mayor, who must select from that list. The City Council's confirmation of the Mayor's selection is required. If the Mayor rejects the list, the Commission must come up with a list of three new candidates and resubmit it to the Mayor. If the City Council fails to confirm the Mayor's choice, the Mayor may either select one of the two remaining candidates from the prior list or request a new list of three candidates from the Commission, until a candidate is both selected by the Mayor and confirmed by the City Council (Section 2-82-140).

With respect to Police Board Members, the Community Group's proposal provides that within 60 days of a vacancy, the Commission will present to the Mayor a list of three candidates for the position who essentially meet the same qualifications as those for Commissioner. Half of the Police Board members must be attorneys with relevant experience and no Police Board member can have been employed by CPD or COPA (or its predecessors) within the prior ten years. The process for submission of the list to the Mayor and the City Council for selection and approval is the same as the process for the head of COPA, described above.

### Mayor's Ordinance

The Mayor's proposals for hiring the head of COPA are substantially identical to those in the Community Groups' proposal,

The Mayor's proposals for hiring of Police Board members are largely identical to those in the Community Group's proposals, except in the following respects:

1. The Mayor's proposal explicitly requires that selection of Police Board candidates also comply with criteria contained in Paragraph 532 of the Consent Decree, which is implicit in the Community Groups' proposal; and
2. The Mayor's proposal only imposes a three-year moratorium on former employment by the CPD or COPA, as opposed to the Community Groups' ten-year moratorium.

Both proposals provide that Police Board members will serve 5-year terms and cannot serve more than two terms. The Community Group's proposal also requires that the Police Board select its president and vice president for two-year terms, with a two-term limit on each position (2-85-

145(d)). The Mayor's proposal is silent on that point and implicitly leaves it for the Police Board to adopt its own procedures in this respect.

### Council Comments

The proposals are nearly identical. With respect to the minimum period of separation from CPD and COPA, we think a three-year period is too short and a ten-year period is too long. The Council recommends that the period be set at five years, which would also make it the same as the requirement for Commissioners.

## **C. RESOLUTIONS OF NO CONFIDENCE AND TERMINATION OF THE SUPERINTENDENT AND OTHER KEY OFFICIALS**

### Community Groups' Ordinance

The Commission may (for just cause) pass a resolution of no confidence in the Superintendent of CPD, the COPA Chief Administrator and/or any member of the Police Board, after giving them a written notice of the reasons and allowing them to respond (Section 2-182-135 (b)-(c),-140(e)-(f),-145(b)-(c)). The ordinance also provides that if the Commission adopts a resolution of no confidence, the City Council Public Safety Committee must consider and recommend whether the official in question should be terminated for cause. That official may ask to appear at a hearing before the Committee. If the Committee recommends termination, the City Council may terminate the official by a majority vote (Section 2-182-135 (c)). The Mayor plays no stated role in the process.

The Community Groups' proposal creates a process in which the Mayor plays no role. If two-thirds of the Commissioners vote to fire any of the officials in question and that decision is confirmed by majority votes in the Public Safety Committee and City Council, the person is fired. It implies (though it does not explicitly state) that the Mayor does not possess a similar, parallel power to fire any of the officials.

### Mayor's Ordinance

The Mayor's Ordinance provides that the Commission may adopt a resolution (based on just cause) of no confidence in the fitness of the Superintendent, the COPA head and/or Police Board members to hold their positions. The Commission shall provide to the Superintendent written notice of its reasons, and he or she may respond thereto. Thereafter the Commission may vote on the resolution, which requires the vote of 5 of its 7 members (Section 2-80-090). If the Commission adopts a resolution of no confidence in any of the officials, the Public Safety Committee and the City Council must vote on the recommendation. The Mayor then has complete discretion to proceed as he or she sees fit with respect to the official in question, after explaining his or her



reasons for doing so in a response to the Commission and City Council. The Mayor's proposal thus leaves the final decision on firing any of the officials in question solely to the Mayor.

### Council Comments

The primary difference between the two proposals is who should have the final say on the firing of the CPD Superintendent, the COPA Chief Administrator, and members of the Police Board. Both proposals would require "just cause" for firing any of those officials, with "just cause" being very broadly defined in both proposals (CGs' Ord.: 2-82-135(b); Mayor's Ord.: 2-80-010).

The Community Groups' proposal creates a process in which the Mayor plays no role. If two-thirds of the Commissioners vote to fire any of the officials in question and that decision is confirmed by majority votes in the Public Safety Committee and City Council, the person is fired. It implies (though it does not explicitly state) that the Mayor does not possess a similar, parallel power to fire any of the officials.

The Mayor's proposal permits the Commission to initiate a possible firing of any of the officials in question by a two-thirds majority. If that position is confirmed by majority votes in the Public Safety Commission and City Council, the issue is referred to the Mayor. However, even if both the Commission and city Council agree that the official should be fired, the final decision is left solely to the Mayor's discretion. The Mayor's proposal does not make clear whether that process is the sole method for firing any of the officials in question or whether the Mayor would remain free to fire them even in the absence of any agreement by the Commission or City Council.

As we have previously stated, we believe that the Mayor bears the primary responsibility for maintaining public safety, while balancing that need against the obligations to abide by constitutional limits on policing and to hold police officers accountable for their actions. Primarily for that reason, the Council does not think it makes sense to completely cut the Mayor out of the decisions to fire the CPD Superintendent, the COPA head, or members of the Police Board. However, we also believe that in view of the Commission's and City Council's shared responsibility for balancing those needs, it makes no sense to essentially cut them out of the final decision to retain or fire a key official and leave that decision solely to the Mayor's discretion.

In the Council's opinion, the best process would involve the Mayor, the Commission, and the Chicago City Council in such decisions. All these three bodies should be able to initiate a review of any of the key officials in question (the CPD Superintendent, the COPA head, and/or Police Board members) with a view to possible termination (by a two-thirds vote of the Commission, a majority vote of the City Council or a written request from the Mayor. The other two non-initiating entities should then have to take a position on the request within a set amount of time. If any two of the three entities (the Mayor, the City Council, or the Commission) agree that the

official should be fired, the official would be fired. Requiring complete unanimity of all three entities would be too constraining and would give too much veto power to any one of the entities.

#### **D. POLICYMAKING FOR CPD, COPA AND THE POLICE BOARD**

##### Community Groups' Ordinance

The Community Groups' proposal permits new and amended policies to originate from the Commission or from the CPD or COPA. The Commission, the CPD, and COPA are required to collaborate with one another, to publish proposed policies and amendments and to hold public hearings on them (2-82-165 (a)-(d)). If they cannot reach agreement, the Commission is authorized to resolve disputes by adopting the disputed policy by a majority vote of the Commissioners (2-82-165(b)). The Community Groups' proposal also provides for the adoption of emergency, interim policies (2-82-165(e)&(f)) and for the Commission to make non-binding suggestions to the Mayor, City Council, and Deputy Inspector General for Public Safety (2-82-165(g)).

##### Mayor's Ordinance

The Mayor's proposal for the adoption of new and amended policies largely mirrors the Community Group's proposal, with the following significant differences:

1. The Police Board is added to the CPD and COPA as an agency for which the Commission can propose policies.
2. If the Commission is unable to reach agreement with the relevant agency, the dispute must be submitted to the Mayor for a decision resolving the dispute.
3. Any new policy that is adopted must provide sufficient time for CPD to implement and comply with it.

##### Council Comments

On the key point of difference, the Council believes that it is more appropriate to have the Chicago City Council resolve disputes over new or amended policies, rather than giving that power to the Commission or the Mayor. In the Council's view, the City Council is in the best position to balance the competing interests in the event of such disputes over policy, which hopefully should be minimal.

The other two changes proposed by the Mayor (extending these provisions to Police Board policy and permitting sufficient time to implement any changes) would seem to make sense, though we question the extent to which the Commission should intrude on details of the quasi-judicial policies of the Police Board, which hears and decides serious disciplinary cases.

## E. COMMISSION MEETINGS, ACCESS TO RECORDS AND REPORTING

### Community Groups' Ordinance

The Community Groups' proposal gives the Commission the ability, subject to applicable law, to obtain access to any information it requires to do its job from the City, CPD, COPA, the Police Board, and any other City agencies (2-82-170). This proposal also contains detailed provisions regarding Commission meetings and records, including the ability to compel testimony and attendance at Commission meetings by the CPD Superintendent, the Chief Administrator of COPA, the President of the Police Board, and the Deputy Inspector General for Public Safety. The Commission can request the City's Inspector General to issue subpoenas to others for testimony and documents (2-82-175(b)-(e)). The Commission can also request studies and audits from the Deputy Inspector General for Public Safety (2-82-175(a)). The Commission would also be required to issue an annual report on its own activities (2-82-185).

### Mayor's Ordinance

The Mayor's proposal gives the Commission similar power to request records from the City, CPD, COPA, and the Police Board, with two additional provisions:

1. The Mayor's proposal creates express exceptions to the duty to produce records if doing so would risk revealing confidential sources, would risk impeding an investigation or would endanger a person (2-80-120(b)); and
2. If the Commission believes a request has been improperly denied, it may file a complaint with the Inspector General (2-80-120(c)).

The Mayor's proposal regarding Commission meetings is similar to the Community Groups' but does not give the Commission the explicit power to compel the appearance of the Superintendent, the head of COPA or the President of the Police Board, though they are required to cooperate (2-80-600(b); 2-80-140). The Mayor's proposal does not give the Commission the power to request that the Inspector General issue subpoenas to others on its behalf. It also requires the Commission to call a special meeting on an issue if a petition signed by at least 5,000 Chicago residents request such a meeting (2-80-060(c)). The Mayor's proposal regarding Commission reports requires more detailed annual reports from the Commission (2-80-130).

### Council Comments

The Council believes that the Community Group's proposal, generally giving the Commission greater powers, should be adopted, with the following changes:

1. With respect to Commission requests for documents, the Community Groups' proposal gives the Commission unlimited power, subject to applicable law, to require production of documents from CPD, COPA, and the Police Board. It does not authorize any provision for the agencies to object to the request or state how any such disputes are to be resolved. The Mayor's proposal requires such disputes to be submitted to the Inspector General for resolution. The Council believes that it would make sense to permit objections based on any of the three exceptions listed in 2-80-120(d) to such requests and to first require that any dispute be submitted to the Inspector General for a decision; however, if the Commission disagrees with the Inspector General's position, the Commission should have the ability to seek a court order directing issuance of an appropriate subpoena.
2. The Mayor's three proposed exceptions to the duty to produce records should be included. The objecting party should bear the burden of proving that the exception applies.
3. The Commission should be required to report annually on its own activities with the more detailed information specified in the Mayor's proposal.
4. As proposed by the Mayor, the Commission should be required to hold a special meeting if requested by petition signed by at least 5,000 Chicago residents.

## **F. COMMISSION STAFF**

### Community Groups' Ordinance

The Community Groups' proposal includes provisions concerning Commission staff and an Office of Community Engagement (Sec. 2-82-180).

### Mayor's Ordinance

The Mayor's proposal contains similar provisions but has a less detailed staffing provision (Sec. 2-80-160).

### Council Comments

The Community Groups' provision regarding staffing has additional requirements that make sense, as does the creation of an Office of Community Engagement.

## **G. RETALIATION AND ENFORCEMENT**

### Community Groups' Ordinance

The Community Group's proposal includes provisions prohibiting threats and retaliation against members of the Commission and interference with its investigation, along with penalties for such acts (2-82-190,-195).

### Mayor's Ordinance

The Mayor's proposal contains similar provisions but has a more detailed penalty provision (2-80-150).

### Council's Comments

The Mayor's prohibition and penalty clauses are more detailed and dovetail better with other City regulations.

## **IV. PROPOSED PUBLIC REFERENDUM**

According to press reports, the Community Groups' proposal is linked to a future binding public referendum in March 2022, that would expand the Commission's powers to hire and fire the CPD Superintendent, to negotiate collective bargaining agreements with the CPD unions and to control the police departments budget. The Council has not seen any concrete proposal and expresses no opinion on the wisdom of such a referendum or of any changes it might propose in the Commission's powers.