

**COMMITTEE ON FINANCE
MONTHLY RULE 45 REPORT
July and August 2020**

On July 20, 2020, at 10:03 am, the Committee on Finance held a remote meeting pursuant to applicable law.

The following members were present: Hopkins, Dowell, King, Sawyer, Mitchell, Harris, Beale, Sadlowski-Garza, Thompson, Quinn, Burke, Moore, Curtis, O’Shea, Brookins, Tabares, Scott, Burnett, Ervin, Taliaferro, Reboyras, Villegas, Mitts, Sposato, Napolitano, Reilly, Smith, Tunney, Osterman, Silverstein, Vice Chairwoman Hairston, and Chairman Waguespack.

The following members were absent: Cardenas, Lopez, Austin.

The following additional aldermen were present: Coleman, Sigcho-Lopez, Cardona, Rodriguez-Sanchez, Nugent, Vasquez, Martin, Hadden.

Chairman Waguespack opened the meeting with a statement regarding the impracticability to meet in person. Chairman Waguespack took a roll call to establish a quorum, as reflected above.

Chairman Waguespack opened the floor for public comment. There was none.

The Committee addressed the following items:

1. Approval of Rule 45 Report of the previous meeting of the Committee on Finance.

No members offered changes or corrections. Vice Chairwoman Hairston moved do pass by the roll call taken to establish quorum. Motion carried on a voice vote.

2. Direct Introduction A communication transmitting reports of cases in which judgments or settlements were entered into for the month of June 2020.

Chairman Waguespack said Item 2 would be placed on file with the Clerk. Ald. Reboyras mentioned he wanted to be recorded as a “no” vote on a future agenda item. Chairman Waguespack said there would be opportunity for that later in the meeting.

5. Direct Introduction A proposed order authorizing the payment of various small claims against the City of Chicago.

6. Direct Introduction A proposed order denying the payment of various small claims against the City of Chicago.

Chairman Waguespack said, without objection, Items 5 and 6 would be placed on the omnibus at City Council. There was no objection.

Chairman Waguespack moved to the supplemental agenda.

1. Two (2) proposed orders authorizing the Corporation Counsel to enter into and execute Settlement Orders in the following case:

A. Manuel Barrios, Brandon Fuller, Savannah Washington v. The City of Chicago, cited as 15-cv-02648 (N.D. IL., J. Gottschall). Amount: \$4,950,000.00

Chairman Waguespack invited Renai Rodney, First Assistant Corporation Counsel, to explain Item 1A, which she did.

Ald. Burke asked for an estimate of plaintiffs' attorneys' fees. Rodney said it would be about one-third. Ald. Burke asked if the court had already approved the fees, and Rodney said they had.

Ald. Thompson asked who represented the plaintiffs, and Rodney provided that information. Ald. Thompson asked who represented the City, and Rodney provided that information.

Ald. Burke asked what the City paid the outside counsel, and Rodney said she did not have that information readily available because it is billed separately, and the settlement amount does not include the City's counsel costs. Ald. Burke asked what types of payments plaintiffs would receive, and Rodney said they would receive Kelly Blue Book value.

Ald. Scott asked for clarification on the payments to plaintiffs, and Rodney provided it.

Ald. Curtis moved do pass by the roll call taken to establish quorum. Motion carried on a voice vote.

B. Charles Green v. Chicago Police Department, No. 2015-CH-17646 (Conlon, J., Chancery Div.); No. 20-0574 (Ill. App. Ct.). Amount: \$500,000.00

Chairman Waguespack invited Renai Rodney, First Assistant Corporation Counsel, to explain Item 1B, which she did.

Ald. Taliaferro asked if Chicago Police had waived the right to claim the Freedom of Information Act request was unduly burdensome due to a lack of response to the original request. Rodney said that was what the circuit court had ruled, and the issue was one of the issues on appeal. Ald. Taliaferro asked how long this would be in court without a settlement being approved at the Committee meeting. Rodney explained the timeline. Ald. Taliaferro asked if the plaintiff's health was accurately reported in the press. Rodney said she did not have that information.

Ald. Burke asked if the City hired outside counsel. Rodney said no. Ald. Burke asked if the costs of complying were already provided for in the City budget. Rodney said she was not sure. The Committee briefly paused due to a technical issue. Upon resumption, Rodney reiterated her point. Ald. Burke said it was germane to the settlement whether the \$8 million costs over 10 years were above and beyond existing appropriation. Rodney said there were compelling reasons to approve the settlement due to the time required to comply. As for providing the last four years of records, that has cost about \$750,000.

Ald. Burke asked if the principle of the issues the Law Department continues to litigate were worth proceeding with the appeal. Rodney said that there are no guarantees in litigation, and if the City lost its appeal, the plaintiff would receive no money award. Ald. Burke asked how much of the settlement would go to attorney's fees. Rodney said that was between the plaintiff and his attorney.

Ald. Sadlowski-Garza said she was concerned that it is so difficult to get records from the Chicago Police Department and asked if these were all paper records. Rodney said the older records were paper, although newer records were digitized. However, Rodney said, old files are often requested and produced in litigation and can be made available via FOIA. Ald.

Sadlowski-Garza asked if the documents requested would ever be provided. Rodney said CPD would not go through the 1967-2011 files, although they would be subject to FOIA in the future.

Ald. Sadlowski-Garza asked if the plaintiff had asked for the files related to his case, or all records. Rodney said it was all records, and she could not speculate on his litigation strategy.

Ald. Sadlowski-Garza asked if the plaintiff would ever be able to prove his innocence. Rodney explained that the plaintiff had exhausted his avenues for any post-conviction claim.

Ald. Brookins asked if any thought has been given to posting all the records online. Rodney said that is being considered. Rodney also said that if someone were to submit a FOIA like this now, it would be properly addressed. However, in this case, CPD failed to respond to the FOIA request before litigation. Rodney outlined how CPD has improved their FOIA process. Ald.

Brookins asked if the settlement included production of the documents. Rodney said that was not correct, but the plaintiff was already receiving documents created between 2011 and 2015. Ald.

Brookins asked if those documents would be made public, and Rodney said an outside group planned to do that.

Ald. Hopkins asked what the basis was for the circuit court's decision on the waiver of the "unduly burdensome" claim on the FOIA. Rodney said the City is litigating that point on appeal.

Ald. Hopkins asked for the legal definition of "unduly burdensome," because this request would seem to be within that definition. Rodney said they hope to make that argument on remand to the circuit court. Ald. Hopkins asked about employment records and FOIA, and Rodney said those

are typically addressed through redactions. Ald. Hopkins asked what protections exist against frivolous complaints against officers. Rodney said that only closed complaints are subject to FOIA.

Vice Chairwoman Hairston said this settlement did not represent transparency, and CPD for years had not complied with FOIA. Vice Chairwoman Hairston asked what changes have been made so the documents could be readily available. Rodney explained changes made to CPD FOIA policy, and the Administration is reviewing ways to make past complaints against officers readily available. Rodney further said that the settlement also would not prohibit the future production of closed complaints.

Vice Chairwoman Hairston said CPD has engaged in a pattern and practice of failing to disclose records and said there should be a schedule and a plan for producing the closed complaints. Vice Chairwoman Hairston asked how much the City has paid out for FOIA violations over the past five years. Rodney said that FOIA payouts sometimes happen if the City

fails to fully comply in the eyes of the court because the statute provides for attorney's fees. Vice Chairwoman Hairston said the Law Department had in the past been found by a court to improperly fail to produce documents, and the City must do better. Vice Chairwoman Hairston said that it might be best to hold the settlement for further review to see how the closed complaints could be produced.

Ald. King echoed Vice Chairwoman Hairston's comments and asked if the City considered proposing a settlement that would have required the production of the documents in an unburdensome way. Rodney said settlement negotiations are confidential, but the plaintiff never attempted to narrow his request. Additionally, whether something is unduly burdensome is a balancing test between the interest the public has in the documents versus how long it takes to produce the documents.

Ald. King expressed concern that settling the case could close off a path to transparency. Rodney said the City was unable to reach an agreement that would have narrowed the scope of the FOIA. Rodney also said the Administration is looking for ways to make the records readily available. Ald. King said any future FOIA like this would be subject to the unduly burdensome standard. Rodney agreed, but the requesting party would have the opportunity to narrow the request. Ald. King asked what would happen if the settlement was defeated or deferred and whether it was possible to settle the case with terms that would allow for the disclosure of the complaints. Rodney said without the settlement, the pending appeal would proceed.

Ald. King asked to clarify how long it would take to produce the documents. Rodney said 10 years and about \$8 million. Ald. King said she hopes the City doesn't miss an opportunity to be more transparent.

Ald. Thompson asked how many FOIA requests CPD receives in a year. Rodney said she would try to find out, but there are many. Ald. Thompson asked how many FOIA requests the City receives outside CPD. Rodney said dozens. Ald. Thompson asked if other departments were sued often. Rodney said CPD receives about 13,000 FOIAs annually, and CPD is not the only department to be sued under FOIA.

Ald. Thompson asked if the records exist since some collective bargaining agreements required that they be destroyed after a period. Rodney said she was not sure. Ald. Thompson suggested that there should be further discussion around this issue. Chairman Waguespack said it might be possible to put together a hearing regarding FOIA. Ald. Thompson said he would follow up with the Chair at a later date.

Ald. Curtis said he believes whomever filed the FOIA knew the City would be unable to respond, and the City needs to fix the issue so it never happens again.

Ald. Ervin asked if the requested documents exist. Rodney said FOIA requires a "reasonable search" for documents, but she does not know if all the documents exist. Ald. Ervin asked if such a search had started. Rodney said a cursory search was done to ascertain the scope of work that would need to be done to comply. Ald. Ervin asked if this settlement amount was inclusive of all

costs, and Rodney said it was. Ald. Ervin asked what the risk was, and Rodney said the risk was subjecting the City to whatever the appellate court decided.

Vice Chairwoman Hairston on a point of information requested clarification on the timing of a settlement. Rodney said the City could settle at any time if the other side was willing.

Ald. Dowell on a point of information asked if the issues in this case could be separated. Rodney said she did not believe so under the terms of the settlement. However, Rodney said, the Administration is trying to find a way to make these documents available to the public.

Ald. Ervin asked if there was additional financial exposure. Rodney said the exposure was the cost of producing the documents. Ald. Ervin said it might make sense to produce the records as a general rule. Rodney said if the settlement was rejected and the City lost in court, the City might also need to pay the plaintiff's attorney fees, probably between \$200,000-\$250,000, plus the costs of additional litigation. Ald. Ervin clarified if the path forward was to approve this settlement and separately move forward with disclosing the records in another fashion. Rodney said it is. Ald. Ervin asked if the Committee could approve the settlement and also require the disclosure of some documents. Rodney said she wasn't sure.

Chairman Waguespack said the settlement could not be bifurcated like that, but other legislation could be crafted to require the disclosure of the records. Ald. Ervin said he wants to stop the financial hemorrhaging related to the case while also moving forward with transparency.

Ald. Hadden said the Committee, and the City Council, should either delay or reject the settlement. Ald. Hadden said she had heard nothing about a plan for disclosure, and \$8 million over 10 years seemed a small price to pay for transparency and reform. Ald. Hadden said the settlement looked like hush money so the City did not have to deal with past issues within CPD. Ald. Hadden said the City Council needs to take strong, bold action to regain the trust of the community.

Rodney said the costs associated with disclosure are related to files CPD knows exist.

Ald. Smith said she agrees with the comments regarding transparency and FOIA, as well as the need for police accountability. However, Ald. Smith said the City should still settle this case. Ald. Smith said the City Council has the power to bring transparency to these complaints, and she would join such an effort, but that should not delay this settlement.

Ald. Dowell asked what role the Invisible Institute plays in this or any case. Rodney said the group publishes police complaint documents on their website, and it is her understanding that the documents currently being produced under this lawsuit are being provided to them. Ald. Dowell asked if the Law Department has had any conversations with the group, and Rodney said she did not know. Ald. Dowell asked if there was consideration to renegotiating the settlement. Rodney said not before the Committee meeting.

Ald. Vasquez said he appreciated the discussion but also asked for a delay or a vote against the settlement. Ald. Vasquez also said that members of the public have wanted access to these records for quite a while. Ald. Vasquez asked how much the City has spent in settlements in the

last 10 years. Rodney said it should all be on the Law Department website, but she did not have the specific number. Ald. Vasquez said the amount that would need to be spent to provide these records was small compared to the amount spent on settlements, as well as CPD's annual budget.

Ald. Vasquez asked if there had been any attempts to make these records public, outside of FOIA or litigation. Rodney said there have been conversations, but there is not a fully formed plan. Rodney said the Administration recognizes the need of transparency.

Ald. Vasquez asked if the City was going to have to spend the \$8 million anyway to provide the transparency. Rodney said she was not sure, since the disclosure might be narrowed beyond what a court might require as part of FOIA litigation. Narrowing that would likely involve talking to community stakeholders about which records are the most important to disclose, Rodney said. Ald. Vasquez argued against supporting the settlement and said that a court order would ensure accountability in what records the City discloses.

Ald. Moore asked if the court required the City to disclose the records being disclosed now. Rodney said yes. Ald. Moore asked which party approached whom to start discussing a settlement. Rodney said it was part of ongoing discussions on how to narrow the request. Ald. Moore asked if the plaintiff introduced the financial compensation. Rodney said it was. Rodney also noted the staffing levels at the CPD FOIA unit.

Vice Chairwoman Hairston on a point of information noted that in a previous lawsuit, a court held that closed complaints against police are public information.

Ald. Martin said he believed the settlement should be delayed while a structure is implemented to disclose records. Ald. Martin expressed concern that some plan is being discussed, but details on the scope of that plan had not been discussed with aldermen.

Ald. Reilly clarified that the plaintiff willingly entered into a settlement with the City. Rodney said that is correct. Ald. Reilly asked if the original purpose of the FOIA was to support the claim that he was wrongfully convicted. Rodney said that is likely the plaintiff's belief, but he has exhausted all avenues of appeal. Ald. Reilly said it is a good idea to discuss how these records are treated, but that should not hold up this settlement.

Ald. Ervin acknowledged Ald. Reilly's point and asked if the City Council trusts itself to do the right thing. Ald. Ervin asked if the settlement could be delayed to allow the Administration time to draft a plan that could be attached to the settlement for disclosure of the records. Rodney said that would depend on if the plaintiff agreed. Ald. Ervin asked when the appellate court might rule. Rodney said the appellate court likely would not hear argument until September.

Vice Chairwoman Hairston on a point of information asked if the appellate court could waive oral argument. Rodney said they could. Ald. Ervin said this case raises some larger questions, and some legislation should be introduced on the issues quickly.

Chairman Waguespack said transparency is the objective throughout the City, and he planned to introduce legislation on the issue as soon as practical. That legislation would likely require the documents be housed and vetted within the Inspector General's data portals.

Ald. Sadlowski-Garza said the City's track record on CPD reform and FOIA is poor, and she plans to vote no on the settlement.

Chairman Waguespack pledged to put together an ordinance for introduction at the next City Council meeting. Ald. Brookins asked if the settlement would be held in Committee. Chairman Waguespack said he could, but he would have the legislation done. Ald. Vasquez asked when aldermen would be able to see a draft. Chairman Waguespack said he would have something for aldermen as soon as possible. Ald. Taliaferro asked about issues regarding the City Clerk's deadline for submitting legislation for the next City Council meeting. Chairman Waguespack said he would distribute a draft as soon as possible. Debate between members ensued on if the ordinance could be introduced sooner than September.

Vice Chairwoman Hairston said the settlement should be held so the settlement and the ordinance could move together. Ald. Hadden asked why this could not be held, when the suit was brought, and how long settlement discussions have been happening. Rodney said suit was filed in 2015, and settlement talks started early this year. Ald. Smith asked when the settlement was agreed to. Rodney said a few weeks ago.

Ald. Smith said she supports the efforts of Chairman Waguespack and said a settlement delay puts the City at risk of losing. Ald. Smith said the plaintiff has the right to settle for whatever he wants. Ald. Smith noted that the consent decree has requirements regarding disciplinary records retention, Chairman Waguespack is worthy of trust, and the Committee should move forward with the settlement.

Ald. Thompson echoed the comments of Ald. Smith and moved do pass by the roll call taken to establish quorum. Vice Chairwoman Hairston moved for a roll call vote. Roll call was taken.

The motion carried 21-8 by the following roll call:

Yes: Hopkins, Harris, Beale, Thompson, Quinn, Moore, Curtis, O'Shea, Brookins, Tabares, Scott, Burnett, Ervin, Taliaferro, Mitts, Sposato, Reilly, Smith, Tunney, Osterman, and Chairman Waguespack.

No: Dowell, King, Sawyer, Mitchell, Sadlowski-Garza, Reboyras, Silverstein, and Vice-Chairwoman Hairston.

Ald. Smith moved to reconsider the vote. Motion failed on voice vote.

The Committee having no further business, on a motion by Ald. Hopkins, the meeting was adjourned at 12:44 pm.

The Committee did not meet in August 2020.

Respectfully submitted,



Scott Waguespack
Chairman, Committee on Finance